

**IMPACTS OF SHIPPING CONTAINER SHORTAGES,
DELAYS, AND INCREASED DEMAND ON THE
NORTH AMERICAN SUPPLY CHAIN**

(117-18)

REMOTE HEARING
BEFORE THE
SUBCOMMITTEE ON
COAST GUARD AND MARITIME TRANSPORTATION
OF THE
COMMITTEE ON
TRANSPORTATION AND
INFRASTRUCTURE
HOUSE OF REPRESENTATIVES
ONE HUNDRED SEVENTEENTH CONGRESS

FIRST SESSION

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JUNE 15, 2021
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CONTENTS

	Page
Summary of Subject Matter	v
STATEMENTS OF MEMBERS OF THE COMMITTEE	
Hon. Salud O. Carbajal, a Representative in Congress from the State of California, and Chair, Subcommittee on Coast Guard and Maritime Transportation, opening statement	1
Prepared statement	3
Hon. Sam Graves, a Representative in Congress from the State of Missouri, and Ranking Member, Committee on Transportation and Infrastructure, opening statement	3
Prepared statement	4
Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chair, Committee on Transportation and Infrastructure, opening statement	4
Prepared statement	5
Hon. Bob Gibbs, a Representative in Congress from the State of Ohio, and Ranking Member, Subcommittee on Coast Guard and Maritime Transportation, opening statement	6
Prepared statement	7
Hon. Jefferson Van Drew, a Representative in Congress from the State of New Jersey, prepared statement	77
WITNESSES	
PANEL 1	
Hon. Daniel B. Maffei, Chairman, Federal Maritime Commission, oral statement	8
Prepared statement	10
Hon. Rebecca F. Dye, Commissioner, Federal Maritime Commission, oral statement	14
Prepared statement	15
PANEL 2	
John W. Butler, President and Chief Executive Officer, World Shipping Council, oral statement	35
Prepared statement	37
Alexis Jacobson, International Accounts Manager, BOSSCO Trading LLC, on behalf of the U.S. Forage Export Council, National Hay Association, and Agriculture Transportation Coalition, oral statement	45
Prepared statement	46
Frank Ponce De Leon, Coast Committeeman, Coast Longshore Division, International Longshore and Warehouse Union, oral statement	53
Prepared statement	55
Eugene D. Seroka, Executive Director, Port of Los Angeles, California, oral statement	57
Prepared statement	58
Jen Sorenson, President, National Pork Producers Council, oral statement	62
Prepared statement	63
SUBMISSIONS FOR THE RECORD	
Submissions for the Record by Hon. Bob Gibbs: Chart, "Shipping Challenges Cause Medical Supply Delays," developed by the Health Industry Distributors Association	78

	Page	
Submissions for the Record by Hon. Bob Gibbs—Continued		
Statement of Ian Jefferies, President and Chief Executive Officer, Association of American Railroads	78	
Statement of Julie Anna Potts, President and Chief Executive Officer, North American Meat Institute	81	
Letter of May 18, 2021, from Eric R. Byer, President and Chief Executive Officer, National Association of Chemical Distributors	83	
Article entitled, “What Do Agriculture Exporters Need From Congress?” Journal of Commerce, June 13, 2021, by Peter Friedmann, Executive Director, Agriculture Transportation Coalition (AgTC)	85	
“Proposed Legislation to Address Ocean Shipping Crisis,” offered by the Agriculture Transportation Coalition	86	
“Overview: The Current Ocean Export Crisis,” offered by the Agriculture Transportation Coalition	86	
Letter of April 27, 2021, from the Agriculture Transportation Coalition et al.	86	
Letter of February 24, 2021, from the Agriculture Transportation Coalition et al.	90	
Letter of March 9, 2021, from Hon. Adrian Smith, Member of Congress et al.	91	
Letter of March 8, 2021, from Hon. Peter A. DeFazio, Chair, House Committee on Transportation and Infrastructure et al.	94	
Letter of March 2, 2021, from Hon. John Thune, U.S. Senator et al.	95	
Letter of February 25, 2021, from Hon. Roger F. Wicker, Ranking Member, U.S. Senate Committee on Commerce, Science, and Transportation et al.	96	
Press Release, “Rep. Schrier Sends Letter to Federal Maritime Commission About Increasing Uncertainty for Washington State Exporters”	97	
Article entitled, “Carriers Rejected at Least \$1.3 Billion in Potential U.S. Agricultural Exports From July to December,” CNBC.com, March 15, 2021, by Lori Ann LaRocco	98	
Article entitled, “COVID–19 Even Affects Apples: Washington Farm Exports Crimped by Cargo-Container Shortage,” Seattle Times, March 9, 2021, by Paul Roberts, Seattle Times Business Reporter	100	
Submissions for the Record by Hon. Alan S. Lowenthal:		
Presentation, “The Anatomy of the Container Terminal Logistics Supply Chain Congestion Issues at the San Pedro Bay Ports During the COVID–19 Pandemic,” prepared by Martin Associates, June 30, 2021 ...	102	
Research Summary, “The Anatomy of the Container Terminal Logistics Supply Chain Congestion Issues at the San Pedro Bay Ports During the COVID–19 Pandemic,” prepared by John Martin, Ph.D., July 2021 .	102	
APPENDIX		
Questions to Hon. Daniel B. Maffei, Chairman, Federal Maritime Commission, from:		
Hon. Julia Brownley	105	
Hon. Dusty Johnson	105	
Questions to Hon. Rebecca F. Dye, Commissioner, Federal Maritime Commission, from:		
Hon. Alan S. Lowenthal	107	
Hon. Dusty Johnson	108	
Questions from Hon. John Garamendi to Frank Ponce De Leon, Coast Committeeman, Coast Longshore Division, International Longshore and Warehouse Union		111



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

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JUNE 11, 2021

SUMMARY OF SUBJECT MATTER

TO: Members of Congress, Subcommittee on Coast Guard and Maritime Transportation
FROM: Staff, Subcommittee on Coast Guard and Maritime Transportation
RE: Hearing on “Impacts of Shipping Container Shortages, Delays, and Increased Demand on the North American Supply Chain.”

PURPOSE

The Subcommittee on Coast Guard and Maritime Transportation will hold a hearing on Tuesday, June 15, 2021, at 11:00 a.m. EDT to examine shipping container shortages and impacts on the North American supply chain. The hearing will take place in 2167 Rayburn House Office Building and via Zoom. The Subcommittee will hear testimony from two panels which include the Federal Maritime Commission (FMC), the World Shipping Council, the U.S. Forage Export Council, the International Longshore & Warehouse Union, the Port of Los Angeles, and the National Pork Producers Council.

BACKGROUND

COVID-19 AND THE MARITIME SUPPLY CHAIN

In 2016, containerization of goods via maritime transportation comprised seventy-six percent of all U.S. trade, and foreign trade at American ports and was valued at \$1.5 trillion.¹ Since the onset of the coronavirus pandemic, however, the global rotation of shipping containers has been severely disrupted. American demand for imported consumer goods, manufacturing parts, and commodities produced in Asia has fueled massive backlogs and delays.² In addition, China’s export capabilities have recovered more quickly than the United States’ capabilities, resulting in a shortage of containers and increased global competition for scarce freight capacity, which is expected to continue beyond the first half of 2021.³

During the COVID-19 pandemic, peloton exercise bikes, refrigerators, lawn chairs, and home gym equipment are a few examples of the thousands of consumer products Americans ordered from manufacturers in China and low-cost producers in

¹National Oceanic and Atmospheric Administration: Office for Coastal Management. “Fast Facts: Ports.” <https://coast.noaa.gov/states/fast-facts/ports.html>. Accessed on June 3, 2021.

²CNBC. “Suez Canal blockage is delaying an estimated \$400 million an hour in goods.” <https://www.cnbc.com/2021/03/25/suez-canal-blockage-is-delaying-an-estimated-400-million-an-hour-in-goods.html>. Accessed June 9, 2021.

³Forbes. “How the Shipping Container Crisis Demonstrates the Risk of Imbalance In Global Trade.” <https://www.forbes.com/sites/forbesbusinessdevelopmentcouncil/2021/05/25/how-the-shipping-container-crisis-demonstrates-the-risk-of-imbalance-in-global-trade/?sh=372c0d941090>. Accessed June 3, 2021.

Vietnam, Indonesia, and Bangladesh.⁴ The overwhelming flow of goods has been from China to the United States, and this heightened demand coupled with labor shortages has resulted in significant port congestion beyond what is normally seen, especially on the West Coast of the United States. Additionally, carriers have chosen to ship empty containers back to Asia rather than carry U.S. exports when it is more profitable to do so.

As a result, traffic volumes from the U.S. to China are historically low.⁵ According to Maersk, the world's largest container shipping corporation, its East (Asia)-West (North America) trade has been the most impacted route in the market.⁶ Currently, for every three containers that China exports to the U.S. West Coast, only one is imported back, exacerbating the trade imbalance.⁷ This uneven recovery has caused container shortages where they are needed most, and exporters across Asia are responding to these shortages by bidding high on freight rates. As a result, global container rates jumped nearly 195 percent, from an average of \$1,377 per 40-foot container in March 2020 to \$4,045 in March 2021.⁸ For comparison, as of June 3, 2021, container rates from Los Angeles to Shanghai were at only \$779 compared to \$5,952 from Shanghai to Los Angeles, corresponding to a 72 percent and 255 percent annual change respectively (Table 1).⁹ U.S. seaborne imports had increased 20 percent by the beginning of the first quarter of 2020, with the growth in household appliances increasing 80.9 percent, while consumer electronics and home furnishings grew by 17.2 percent and 34.4 percent correspondingly.¹⁰

Route	20-May-21	27-May-21	03-Jun-21	Weekly change (%)	Annual change (%)
Composite Index	\$6,135	\$6,257	\$6,464	3% ▲	310% ▲
Shanghai - Rotterdam	\$9,865	\$10,174	\$10,462	3% ▲	518% ▲
Rotterdam - Shanghai	\$1,546	\$1,546	\$1,629	5% ▲	60% ▲
Shanghai - Genoa	\$9,477	\$9,662	\$9,900	2% ▲	418% ▲
Shanghai - Los Angeles	\$5,605	\$5,742	\$5,952	4% ▲	255% ▲
Los Angeles - Shanghai	\$738	\$744	\$779	5% ▲	72% ▲
Shanghai - New York	\$7,366	\$7,147	\$7,559	6% ▲	188% ▲
New York - Rotterdam	\$888	\$946	\$991	5% ▲	95% ▲
Rotterdam - New York	\$3,553	\$3,670	\$3,720	1% ▲	48% ▲

Table 1. Spot freight rates across eight major East-West trade routes. Source: Drewry Supply Chain Advisors.¹¹

⁴ Quartz. "Cheap Chinese exercise bikes are beating US tariffs." <https://qz.com/1899691/cheap-chinese-exercise-bikes-are-beating-us-tariffs/>. Accessed June 9, 2021.

⁵ Reuters. "Boxed out: China's exports pinched by global run on shipping containers." <https://www.reuters.com/article/us-global-shipping-container/boxed-out-chinas-exports-pinched-by-global-run-on-shipping-containers-idUSKBN28K0UA>. Accessed June 3, 2021.

⁶ Financial Times. "How coronavirus is changing global shipping routes." <https://www.youtube.com/watch?v=MvG8c8v5Nfw> Accessed June 3, 2021.

⁷ Reuters. "Boxed out: China's exports pinched by global run on shipping containers." <https://www.reuters.com/article/us-global-shipping-container/boxed-out-chinas-exports-pinched-by-global-run-on-shipping-containers-idUSKBN28K0UA>. Accessed June 3, 2021.

⁸ Forbes. "Container Ship Operators Are On A Tear As Freight Rates Skyrocket." <https://www.forbes.com/sites/greatspeculations/2021/03/25/container-ship-operators-are-on-a-tear-as-freight-rates-skyrocket/?sh=2b9c31b439a6>. Accessed June 3, 2021.

⁹ Drewry Supply Chain Advisors. "World Container Index—03 Jun." <https://www.drewry.co.uk/supply-chain-advisors/supply-chain-expertise/world-container-index-assessed-by-drewry>. Accessed June 9, 2021.

¹⁰ Panjiva Market Intelligence. "The \$10 billion shipping inflation problem and corporate cost concerns." <https://panjiva.com/research/the-10-billion-shipping-inflation-problem-and-corporate-cost-concerns/39259>. Accessed June 3, 2021.

¹¹ Drewry Supply Chain Advisors. "World Container Index—03 Jun." <https://www.drewry.co.uk/supply-chain-advisors/supply-chain-expertise/world-container-index-assessed-by-drewry>. Accessed June 9, 2021.

While COVID–19 restrictions triggered a shift in consumer spending that carriers could not have predicted, this disruption has exposed the gaps in port productivity across the country.¹² As of February 20, 2021, nearly a year into the pandemic, 35 container ships sat idle awaiting cargo discharge outside the Ports of Los Angeles and Long Beach.¹³ And during this surge, West Coast ports’ productivity has increased 50 percent.¹⁴ Almost every ship and container has been deployed into the market since the Fall of 2020.¹⁵ In the race to build containers, logistics companies are finding that orders for many new containers were canceled or delayed in the first half of 2020 during the global lockdown, resulting from a depleted supply of steel and lumber needed for container construction.¹⁶

Earlier in 2021, West Coast ports saw a rise in COVID–19 cases amongst its longshore workers.¹⁷ This month, an entire terminal at the world’s fourth-busiest container port in Shenzhen, China was closed for multiple days following high COVID–19 positivity rates among its dock workers.¹⁸ Additionally, the limited availability of truck drivers and dock workers means more extended wait periods in unloading and packing ships.

Accessibility continues to be a significant issue for truckers and other transporters in the supply chain. For example, the lack of appointments to enter terminal gates to repossess import containers for U.S.-based exporters has severely affected how port distribution centers are accepting containers.¹⁹ Containers are filling terminals and storage locations, making it difficult for truckers to return containers to a terminal, or move them geographically out of a given zone.²⁰ Currently, some containers have been sitting idle for up to 30 days, representing a significant opportunity cost.²¹

U.S. AGRICULTURE EXPORTERS

As the average container turnaround time has increased from 60 to 100 days, no sector has felt the pain of overstretched supply chains more than American agricultural exporters.²² The perishable commodities are not only delayed in their Asian market arrivals, but spot rates have caused carriers to prefer shipping back empty containers as quickly as they can. Deferring the return of their containers over low-value exports to Asia has made it more difficult for American exports to secure the needed equipment, particularly for inland shipments.²³

The current state of affairs may be circumstantial due to the COVID–19 pandemic, but U.S. agriculture exporters view the crisis as a designed effect of the for-

¹²The Journal of Commerce. “ONE’s Nixon says US port productivity gaps mean congestion for months.” https://www.joc.com/port-news/us-ports/tpm21-one%E2%80%99s-nixon-says-us-port-productivity-gaps-mean-congestion-months_20210302.html. Accessed June 3, 2021.

¹³The Seattle Times. “Seattle and Tacoma are a rarity among U.S. ports right now, with room for more ships.” <https://www.seattletimes.com/business/international-trade/seattle-and-tacoma-are-a-rarity-among-u-s-ports-right-now-with-room-for-more-ships/>. Accessed June 9, 2021.

¹⁴Vice News. “What an Ocean Traffic Jam Looks Like.” <https://www.youtube.com/watch?v=y48LHkGX0hg>. Accessed June 3, 2021.

¹⁵The New York Times. “I’ve Never Seen Anything Like This: Chaos Strikes Global Shipping.” <https://www.nytimes.com/2021/03/06/business/global-shipping.html>. Accessed June 7, 2021.

¹⁶CNBC. “An aggressive fight over containers is causing shipping costs to rocket by 300%.” <https://www.cnn.com/2021/01/22/shipping-container-shortage-is-causing-shipping-costs-to-rise.html>. Accessed June 7, 2021.

¹⁷CNBC. “An aggressive fight over containers is causing shipping costs to rocket by 300%.” <https://www.cnn.com/2021/01/22/shipping-container-shortage-is-causing-shipping-costs-to-rise.html>. Accessed June 7, 2021.

¹⁸Bloomberg. “China Port Delays Threaten New Disruptions in Global Trade.” <https://www.bloomberg.com/news/newsletters/2021-06-07/supply-chains-latest-china-port-delays-add-disruptions-to-trade>. Accessed June 7, 2021.

¹⁹Agriculture Transportation Coalition. “Overview: The Current Export Crisis.” https://soyagrainsalliance.org/wp-content/uploads/2021/02/AgTC-The-Current-Export-Crisis_02-12-21.pdf. Accessed June 2, 2021.

²⁰The Journal of Commerce. “Import deluge fills LA-LB terminals to capacity.” https://www.joc.com/port-news/us-ports/import-deluge-fills-la-lb-terminals-capacity_20201209.html. Accessed June 7, 2021.

²¹The Journal of Commerce. “FMC reviewing whether ag export booking rejections violate Shipping Act.” <https://www.joc.com/print/3647481>. Accessed June 7, 2021.

²²Reuters. “Boxed out: China’s exports pinched by global run on shipping containers.” <https://www.reuters.com/article/us-global-shipping-container/boxed-out-chinas-exports-pinched-by-global-run-on-shipping-containers-idUSKBN28K0UA>. Accessed June 3, 2021.

²³Cargo-Link International. “Carriers file rate increases on US agriculture exports to Asia.” <https://www.cargolink.com/carriers-file-rate-increases-on-us-ag-exports-to-asia/>. Accessed June 3, 2021.

eign ownership of ocean carriers who face minimal regulation.²⁴ Further, the industry has gone from over 20 Pacific-route ocean carriers 25 years ago; several of whom were U.S. owned, managed, crewed and operated, to only nine shipping companies today.²⁵ For U.S. agriculture exporters who need refrigerated containers, there is only one foreign carrier servicing the Pacific route, rendering them wholly reliant upon foreign carriers.²⁶ Beginning in October 2020, German container transportation company Hapag-Lloyd informed soybean exporters that it would not be receiving their export loads from the Midwest.²⁷ Like most ocean carriers, it opted instead to maximize the volume of imports to the United States. This is because freight rates for U.S. agriculture and forest product exports earn \$400 to \$1,800 per container, compared to \$10,000 to \$12,000 per container on goods from China to the United States.²⁸

The previous U.S. peak farming season saw agriculture exporters face significant barriers to deliver on time to foreign customers in Asia, the bulk of their clientele. Moreover, thousand-dollar general rate increases (GRI) in Forty-Foot Equivalent Units (FEUs) have created transportation costs so high that exporters cannot compete in the foreign marketplace.²⁹ And in situations in which agriculture exporters could pay the increased fees, shipping carriers have often rejected the product. In October and November of 2020, ocean carriers rejected 177,930 Twenty-Foot Equivalent Units (TEU), totaling \$632 million in export trade losses.³⁰ In response, agriculture exporters under the Agriculture Transportation Coalition called on the FMC to address these carriers who were refusing their bookings through February 2021.³¹ According to Hayden Swofford a representative of the independent Pacific Northwest Asia Shippers Association, ocean carriers are increasing westbound rates through “peak-season surcharges (PSS),” despite exporters having contracts for specific weekly exports.³² Carriers refuse to load agriculture and forest exports unless a PSS is paid, which exporters characterize as “extortion.”³³

The FMC did not address the surcharges and heightened rates as extortion, but a ruling they issued in April 2020 set guidelines for reasonable practices for ocean carriers, which ultimately was never adopted by the industry.³⁴ In response, over seventy agriculture trade associations and exporters sent a letter in February 2021 to the Biden Administration, urging the President to apply subtitle IV of title 46, United States Code, popularly known as the Shipping Act.³⁵ By November 2020, the FMC initiated an expanded investigation, and in March 2021, 24 senators sent a letter to the FMC’s then Chairman, Michael Khouri, expressing support for the Commission’s efforts to investigate the potential violations of the Shipping Act.³⁶ In a similar letter, Committee on Transportation and Infrastructure Chair Peter DeFazio (D–OR), Ranking Member Sam Graves (R–MO), Subcommittee on Coast Guard and Maritime Transportation Chair Salud Carbajal (D–CA), and Subcommittee Ranking Member Bob Gibbs (R–OH) called on the FMC to ensure that ocean carriers are abiding by U.S. law and are not engaging in unjust and unreasonable shipping practices resulting from the COVID–19 pandemic.³⁷

²⁴ Agriculture Transportation Coalition. “Overview: The Current Export Crisis.” https://soygrainsalliance.org/wp-content/uploads/2021/02/AgTC-The-Current-Export-Crisis_02-12-21.pdf. Accessed June 2, 2021.

²⁵ *Id.*

²⁶ *Id.*

²⁷ The Journal of Commerce. “Ag shippers slam carriers for refusing some export loads.” https://www.joc.com/maritime-news/container-lines/ag-shippers-slam-carriers-refusing-some-export-loads_20201023.html. Accessed June 6, 2021.

²⁸ See Footnote 13.

²⁹ The Journal of Commerce. “Trans-Pacific carriers push third GRI in a month.” https://www.joc.com/maritime-news/container-lines/trans-pacific-carriers-push-third-gri-month_20200630.html. Accessed June 6, 2021.

³⁰ CNBC. “Shipping carriers rejected tons of U.S. agricultural exports, opting to send empty containers to China.” <https://www.cnbc.com/2021/01/26/shipping-carriers-rejected-us-agricultural-exports-sent-empty-containers-to-china.html>. Accessed June 7, 2021.

³¹ The Journal of Commerce. “FMC reviewing whether ag export booking rejections violate Shipping Act.” <https://www.joc.com/print/3647481>. Accessed June 7, 2021.

³² *Id.*

³³ *Id.*

³⁴ Federal Maritime Commission. “Commission Issues New Guidance on Detention & Demurrage.” <https://www.fmc.gov/new-guidance-detention-demurrage/>. Accessed June 7, 2021.

³⁵ Agriculture Transportation Coalition et al. “Letter to President Biden from 70+ Ag Organizations.” Accessed June 3, 2021.

³⁶ United States Senate to Federal Maritime Commission. “Letter from 24 Senators to FMC Chair.” Accessed June 3, 2021.

³⁷ Committee on Transportation and Infrastructure. “Committee Leaders Urge Protection of American Shippers from Unjust Shipping Practices Resulting from COVID–19 Pandemic.” <https://transportation.house.gov/news/press-releases/committee-leaders-urge-protection-of->

However, prior to the expansion of the investigation, FMC Commissioners Carl Bentzel and Daniel Maffei sent a letter to the World Shipping Council (WSC) expressing apprehension of the ocean carrier's practices. While the WSC cannot legally enforce the Shipping Act on its members, the Commissioners stated that it was necessary to inform them since the "carriers [were] providing 1 percent to 5 percent of the containers originally agreed upon in contracts."³⁸ Through the FMC, exporters have the right to file a formal complaint if their contracts are not being honored, yet according to the Commissioners, no shippers came forward. According to then-Commissioner and now Chairman Maffei, exporters, "they have a relationship with these carriers, and are very concerned that . . . if they make any sort of formal complaints, that they will be harmed in terms of their future relationship with the carrier."³⁹

Nevertheless, U.S. shipping groups are pushing the FMC to act against unreasonable detention and demurrage fees, charges in which are imposed by the shipper the use of the container within the terminal beyond the free time period (demurrage) or for the use of the container outside of the terminal or depot, beyond the free time period (detention). These groups state that a lack of clarity from operators and the FMC alike on such charges has created a situation in which detention and demurrage are utilized as revenue generators, rather than assuring the pickup of import containers and a quicker return of empty ones.⁴⁰ In response, the FMC is examining whether these fees are reasonable in their Fact Finding 29 investigation.⁴¹

CONCLUSION

According to an April 2021 letter from the Agriculture Transportation Coalition to the Department of Transportation Secretary, Pete Buttigieg, foreign markets are the destination of twenty percent of the U.S. agriculture industry.⁴² And while most trade economists forecast that container and capacity shortages will diminish once the pandemic-related cargo surge subsides, there are also concerns that these markets may not come back for U.S. agriculture exporters.⁴³ American almonds, walnuts, timber, citrus, and hay that are traditionally exported to Asian markets are now facing competition from Australia, South Africa, and Chile.⁴⁴ U.S. agricultural exporters to China have worked hard to develop their market, outliving a previous tariff war and trade-related tensions to sustain a trade relationship between the world's two largest economies.⁴⁵ However, if exporters continue to face challenges in securing equipment or freight rates, they may ultimately lose their customers. U.S. agricultural exporters are imploring the Administration and Congress to level this imbalanced trade relationship.

While the pandemic has shed a light on the monopolization of the shipping industry and the delicate balance this supply chain must preserve to remain competitive with Asia, it also raises the issue of U.S. port productivity. According to the World Bank, not a single U.S. port is listed in the international top 50 container ports for productivity.⁴⁶ It takes 24 seconds to move a container at Chinese ports compared to 48 seconds at West Coast ports. Moreover, shocks to the supply chain system are becoming more common, as evidenced by the Suez Canal blockage in March 2021. These episodes illustrate the need for ocean carriers and logistics companies to

american-shippers-from-unjust-shipping-practices-resulting-from-covid-19-pandemic. Accessed June 9, 2021.

³⁸Supply Chain Dive. "Refusing US export cargo may violate Shipping Act; FMC warns in letter to carrier association." Accessed June 6, 2021.

³⁹*Id.*

⁴⁰The Journal of Commerce. "Top US maritime regulator wants to strengthen enforcement." https://www.joc.com/regulation-policy/top-us-maritime-regulator-wants-strengthen-enforcement_20210512.html. Accessed June 9, 2021.

⁴¹Federal Maritime Commission. "Fact Finding 29." <https://www.fmc.gov/fact-finding-29/>. Accessed June 9, 2021.

⁴²Agriculture Transportation Coalition et al. "Agriculture Transportation Coalition to Secretary Buttigieg." Accessed June 3, 2021.

⁴³The Seattle Times. "COVID-19 affects even apples—Washington farm exports crimped by cargo-container shortages." Accessed June 3, 2021.

⁴⁴West Coast Nut. "California's Ag and Food Industry has born the brunt of the trade war." <http://www.wcng.com/2021/04/01/californias-ag-and-food-industry-has-borne-the-brunt-of-the-trade-war/>. Accessed June 10, 2021.

⁴⁵Office of the United States Trade Representative. "Foreign Trade Barriers." Accessed June 8, 2021.

⁴⁶Wall Street Journal. "Behind Your Long Wait for Packages." <https://www.wsj.com/articles/behind-your-long-wait-for-packages-11622653994>. Accessed June 7, 2021.

adopt more resilient measures, along with digital solutions such as mobile apps and real-time container tracking for truckers and exporters.⁴⁷

WITNESS LIST

PANEL 1:

- The Honorable Daniel B. Maffei, Chairman, Federal Maritime Commission
- Ms. Rebecca Dye, Commissioner, Federal Maritime Commission

PANEL 2:

- Mr. John Butler, President and Chief Executive Officer, World Shipping Council
- Ms. Alexis Jacobson, International Accounts Manager, BOSSCO Trading LLC, *on behalf of U.S. Forage Export Council*
- Mr. Frank Ponce De León, Coast Committeeman, International Longshore & Warehouse Union
- Mr. Eugene D. Seroka, Executive Director, Port of Los Angeles
- Ms. Jen Sorenson, President, National Pork Producers Council

⁴⁷Freight Waves. “The causes of port congestion—and tactics to improve efficiency.” <https://www.freightwaves.com/news/viewpoint-the-causes-of-port-congestion-and-tactics-to-improve-efficiency>. Accessed June 8, 2021.

IMPACTS OF SHIPPING CONTAINER SHORTAGES, DELAYS, AND INCREASED DEMAND ON THE NORTH AMERICAN SUPPLY CHAIN

TUESDAY, JUNE 15, 2021

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COAST GUARD AND MARITIME
TRANSPORTATION,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 11:03 a.m. in room 2167 Rayburn House Office Building and via Zoom, Hon. Salud O. Carbajal (Chair of the subcommittee) presiding.

Members present in person: Mr. Carbajal, Mr. DeFazio, Mr. Larsen, Ms. Brownley, Mr. Garamendi, Mr. Gibbs, Mr. Graves of Missouri, and Ms. Malliotakis.

Members present remotely: Mr. Auchincloss, Mr. Lowenthal, Mr. Pappas, Dr. Van Drew, Mr. LaMalfa, and Mr. Johnson of South Dakota.

Mr. CARBAJAL. I ask unanimous consent that the chair be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing, and ask questions.

Without objection, so ordered.

For Members participating remotely, please let committee staff know as soon as possible if you are experiencing connectivity issues or technical problems.

To avoid any inadvertent background noise, I request that every Member please keep their microphone muted when not seeking recognition to speak. Should I hear any inadvertent background noise, I will request that the Member please mute their microphone.

And finally, to insert a document into the record, please have your staff email it to DocumentsT&I@mail.house.gov.

With that, I will proceed with my remarks.

Good morning, everyone, and welcome to today's Coast Guard and Maritime Transportation Subcommittee hearing on "Impacts of Shipping Container Shortages, Delays, and Increased Demand on the North American Supply Chain."

Today we will hear from witnesses who can speak to the unprecedented conditions in the container shipping market. This is an important issue, and requires our attention not only to determine the root causes of the problem, but also to hear potential solutions to

alleviate the strain on our supply chain and prevent disruptions in the future.

In every sector of international commerce, the COVID-19 pandemic is having long-lasting consequences, and it is drastically disrupting global and domestic supply chains.

The shift to work from home for many Americans resulted in a significant increase in online shopping. A heightened demand for imported consumer goods, manufacturing parts, and commodities produced in Asia, coupled with periodic labor shortages due to COVID outbreaks, has fueled massive backlogs and price increases in the shipping container market.

The increased flow of goods has primarily been from China to the United States, and has resulted in significant port congestion, especially on the U.S. west coast. South of my district, at the Ports of Los Angeles and Long Beach, there are as many as 60 ships anchored off the coast, which doesn't include even more ships that were unable to anchor offshore, due to a lack of overflow space. This is a major problem.

In addition, carriers have often chosen to ship empty containers back to Asia, rather than carry U.S. exports, since it is more profitable to do so. As of June 3rd, container rates from Los Angeles to Shanghai were only \$779, compared to \$5,952 from Shanghai to Los Angeles, highlighting just how massively imbalanced the market is.

Container shortages have placed a heavy strain on our agricultural exporters, leaving them without access to international markets, and no guarantee that their product will be delivered on time. These shortages also cause backups in port terminals, where containers are stacking higher than ever, making it more difficult for truckers to move containers across the country.

Longshore workers are burning both ends of the candle trying to keep pace with the deluge of imports. And all the while, American workers have been exposed to numerous COVID-19 outbreaks in ports, making their health and welfare all the more uncertain.

Delays are also costly, not only in time lost, but also in the application of detention and demurrage fees for lengthy container storage times, both on ships and on docks. For example, container turnaround times have nearly doubled, from 60 to 100 days. Add to that peak-season surcharges, and it becomes very difficult for our exporters to compete in the global marketplace.

On March 10th, I sent a bipartisan letter to the Federal Maritime Commission, along with Chairman DeFazio, Ranking Member Graves, and Ranking Member Gibbs, to ensure that ocean carriers are abiding by the Shipping Act of 1984, and not engaging in unjust and unreasonable shipping practices.

I look forward to hearing from the FMC, who is currently conducting Fact Finding 29, an investigation to identify operational solutions to cargo delivery system challenges related to COVID-19.

Today I look forward to hearing from diverse interests, including international carriers, domestic exporters, labor, and ports, as well as from the FMC, on how they are addressing this issue.

[Mr. Carbajal's prepared statement follows:]

Prepared Statement of Hon. Salud O. Carbajal, a Representative in Congress from the State of California, and Chair, Subcommittee on Coast Guard and Maritime Transportation

Good morning, and welcome to today's Coast Guard and Maritime Transportation Subcommittee hearing on "Impacts of Shipping Container Shortages, Delays, and Increased Demand on the North American Supply Chain". Today, we will hear from witnesses who can speak to the unprecedented conditions in the container shipping market. This is an important issue and requires our attention not only to determine the root causes of the problem, but also to hear potential solutions to alleviate the strain on our supply chain and prevent disruptions in the future.

In every sector of international commerce, the COVID-19 pandemic is having long-lasting consequences and is drastically disrupting global and domestic supply chains. The shift to work from home for many Americans resulted in a significant increase in online shopping. A heightened demand for imported consumer goods, manufacturing parts, and commodities produced in Asia coupled with periodic labor shortages due to COVID outbreaks has fueled massive backlogs and price increases in the shipping container market.

The increased flow of goods has primarily been from China to the United States and has resulted in significant port congestion, especially on the U.S. West Coast. South of my district at the Ports of Los Angeles and Long Beach, there are as many as 60 ships anchored off the coast, which doesn't include even more ships that were unable to anchor offshore due to a lack of overflow space. This is a major problem.

In addition, carriers have often chosen to ship empty containers back to Asia rather than carry U.S. exports since it is more profitable to do so. As of June 3rd, container rates from Los Angeles to Shanghai were only \$779 compared to \$5,952 from Shanghai to Los Angeles, highlighting just how massively imbalanced the market is.

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Today, I look forward to hearing from diverse interests, including international carriers, domestic exporters, labor, and ports; as well as from the FMC on how they are addressing this issue.

Mr. CARBAJAL. I now call on Ranking Member Graves for an opening statement.

Mr. GRAVES OF MISSOURI. Thank you, Chairman Carbajal, and also I want to add my thanks to our witnesses here today.

I am very interested to hear what our witnesses have to say about the impact of the current cargo surge on the availability of containers for agricultural products, agricultural exports, imports, and the capacity to move agricultural products, obviously, to U.S. ports.

I represent a very heavily agricultural district, and exports represent life and death for my district's economy. I understand that the Federal Maritime Commission doesn't approve ocean carrier routes, or require the availability of equipment on those routes.

But I am very interested to hear about Federal Maritime Commissioner Dye's Fact Finding No. 29, as the chairman pointed out, when those results, obviously, become available.

I am also looking forward to hearing from Chairman Maffei about whether the Federal Maritime Commission has the authority it needs to take effective enforcement actions when unfair and unreasonable practices are identified.

I am looking forward to this hearing. Thanks for having it. And with that, Mr. Chairman, I will yield back.

[Mr. Graves of Missouri's prepared statement follows:]

Prepared Statement of Hon. Sam Graves, a Representative in Congress from the State of Missouri, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chair Carbajal, and thank you to our witnesses for being here today.

I am very interested to hear what the witnesses have to say about the impact of the current cargo surge on the availability of containers for agricultural exports, and the capacity to move agricultural products to U.S. ports for export. I represent a heavily agricultural district, and exports represent life and death for my district's economy.

I understand that the Federal Maritime Commission does not approve ocean carrier routes or require the availability of equipment on those routes. But I am very interested to hear about Federal Maritime Commissioner Dye's Fact Finding #29, and when the results of that effort will be available.

I'm also looking forward to hearing from Chairman Maffei about whether the Federal Maritime Commission has the authority it needs to take effective enforcement actions when unfair and unreasonable practices are identified.

Thank you, Chair Carbajal. I yield back.

Mr. CARBAJAL. Thank you. I will now recognize Chairman DeFazio.

Mr. DEFazio. Thank you, Mr. Chairman. I support what the ranking member just said, in terms of potentially moving toward a solution to this issue. I know a lot of us—Sam has, and I have, and many Members have heard from constituents who are concerned about the supply chain disruptions. In fact, today, one of my constituents, Alexis Jacobson, the international accounts manager for BOSSCO Trading LLC, located in Tangent, Oregon, will be testifying on issues, and sharing her experience as an agricultural exporter operating on the west coast.

I don't think this hearing could have come at a more appropriate time. I am not going to belabor some of the points that were made earlier about how critical the maritime supply chain is, but there was a 195-percent increase in the cost of transporting a shipping container in 1 year, somewhat caused by consumer demand here in the United States.

But, the problem is, this is an asymmetric demand for imports. It means that shippers are focusing on carrying high-value goods from overseas, and not so much on our critical, but lower cost exports, particularly in the agricultural sector. This has included citrus, almonds, walnuts, tomatoes, timber, seed, hay, straw, just to name a few.

Some of these things require refrigeration, and delays can cause tremendous losses. In Oregon last year, the recycling industry exported 280,000 metric tons of product worth \$176 million. And in the U.S., more than 30 percent of our recycled material is exported.

Container shortages and rate increases have resulted in a year-over-year decline in those exports in February of this year, the most recent statistics we have.

The ports have become more productive. They have doubled their productivity. But the lines of ships go over the horizon, backed up, waiting to get in. We had, obviously, COVID disruptions, and other things. Then we had some labor shortages because of that. We are recovering from those things. But these delays are increasing costs for smaller exporters, and exporters of, again, these products that are not the highest value.

Last year this subcommittee held a hearing on the maritime supply chain, how to rebuild it following COVID-19. We did many, many rescue packages, but we never helped the ports in any significant way. We passed the Maritime Transportation System Emergency Relief Authority, but it failed to get funded, which could have helped mitigate or prevent some of these problems this year.

I have heard from ports, I have heard from shippers, shipping companies, and labor on potential solutions. And I am hopeful that today's hearing will lead us in a direction where we can take corrective action. And hopefully, this year, if it requires Federal appropriations, get the money spent, and solve this problem. It is absolutely critical to our economy.

Thank you for holding this hearing, Mr. Chairman.

[Mr. DeFazio's prepared statement follows:]

Prepared Statement of Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chair, Committee on Transportation and Infrastructure

Thank you, Chair Carbajal, for holding this important hearing today to focus on delays and disruptions within the maritime supply chain due to the COVID-19 pandemic and its effects on U.S. shippers.

Like many of my colleagues, I've been hearing from constituents about concerns regarding supply chain disruptions and the ongoing shipping delays. These stakeholders range from farmers to retailers to recyclers, all of whom are experiencing delays or even cancellations of everyday deliveries to their consumers.

In fact, one of my constituents, Alexis Jacobson, International Accounts Manager for BOSSCO Trading LLC located in Tangent, Oregon, is testifying on the second panel. I want to thank Ms. Jacobson for joining us for this hearing and sharing her experiences as an agricultural exporter operating on the West Coast. This hearing could not come at a more appropriate time.

The maritime supply chain is critical to America's economy and national security, and that point could not be more evident than it is today. Sometimes it takes a major disruption to highlight vulnerabilities. For years, we've been warned of the fragility of this system, and I've continually pushed for investment in the maritime supply chain to increase productivity and enhance resilience.

The average cost of transporting a shipping container has increased nearly 195 percent over the past year. Concurrently, consumer demand for foreign made imports has grown exponentially, and ocean carriers are struggling to keep up. This asymmetric demand for imports means that it is more profitable for shippers to carry high-value goods from overseas rather than lower value domestic exports. These conditions are taking a toll on West Coast exporters, including producers of citrus, almonds, walnuts, tomatoes, timber, seed, and hay, just to name a few. And with many agricultural products requiring refrigeration, delays in shipment could spell significant losses.

In my home state of Oregon, the recycling industry exported 283,992 metric tons of product in 2020, worth \$176.1 million. And in the U.S., more than 30 percent of the recycled material is exported. Container shortages and rate increases, however,

have resulted in a 6.7 percent year-over-year decline in export volume as of February 2021.

Despite more than doubling their productivity over previous years, West Coast ports remain congested with vessels anchored offshore and containers stacking up in marine terminals. This has resulted in delays in the transportation of these goods across the country. In addition, COVID-19 outbreaks earlier this year resulted in labor shortages that we're still recovering from. These delays mean costly penalties that smaller exporters simply cannot pay.

Last Congress, this subcommittee held a hearing on the maritime supply chain and how to rebuild it following the COVID-19 pandemic. At the time, Chinese factories were shut down, and shipping was at an all-time low. We heard from witnesses that not only foreshadowed the impending strains on the supply chain that we're currently seeing, but also compelled action to help the industry emerge even stronger.

As we know, that didn't happen, and what we see today is the result of inaction. While nothing could prevent the surge in consumer demand for foreign made products, investments in the Maritime Transportation System Emergency Relief Authority could have helped ports and marine terminals respond to the impacts of COVID-19.

I've heard from ports, shippers, shipping companies, and labor on potential solutions. I hope this hearing today will provide a productive conversation on the ongoing issues in the supply chain and will also present helpful guidance on a path forward.

Mr. CARBAJAL. Thank you, Chairman DeFazio. I now recognize Ranking Member Gibbs.

Mr. GIBBS. Thank you, Mr. Chairman.

First, before I start, I want to ask unanimous consent that the following items be inserted in the record: a chart from the Health Industry Distributors Association, a statement from the Association of American Railroads, a statement from the North American Meat Institute, a letter from the National Association of Chemical Distributors, and a dozen items from the Agriculture Transportation Coalition.

I understand that these have all been provided electronically to the subcommittee legislative system.

Mr. CARBAJAL. Without objection, submitted.

[Items submitted for the record by Hon. Gibbs are on pages 78-102.]

Mr. GIBBS. Yes, thank you.

Thank you, Chairman Carbajal and our witnesses, for being here today. Since the beginning of the traditional peak shipping season, starting last August, United States ports have been experiencing a record surge in cargo imports. This surge is expected to continue at least through 2021, and some say the second quarter of 2022, as we recover from COVID, and also consumer behavior changes. More than 30 container vessels routinely wait for space at the Ports of L.A. and Long Beach, and the Port of L.A. had its biggest month on record in May.

The surge is attributed to pent-up demand from the reduced cargo flow earlier in 2020, changes in consumer spending patterns given increased staying-at-home time in 2020 and 2021, increases in pandemic-related items like personal protective equipment, and decreased port throughput because of COVID's impact on port operations, including increased testing, COVID infections in workers, and quarantining. I look forward to hearing from the witnesses if they agree with these popular explanations of the cargo surge.

The real-world pressure test for the U.S. port capacity has led to container shortages for certain U.S. exports, particularly ag ex-

ports; pressure on intermodal rail connections; delays in receipt of merchandise for certain importers; shortages of chassis for drayage; and accusations of abuses regarding detention and demurrage charges, which, I will note, ocean carriers and terminal operators deny.

Prior to the container surge, the Federal Maritime Commission was already conducting Fact Finding No. 29 regarding detention and demurrage. I understand that the factfinding is now also looking at container shortages in some export markets. I look forward to Commissioner Dye's update on the status of Fact Finding No. 29.

I understand the Commissioner is the former staff director of this subcommittee, and I'm also interested in learning more about her work on supply chain data transparency.

In addition, the Commission has issued interpretive guidance on detention and demurrage to ocean carriers and marine terminal operators, but the Hill continues to hear complaints, though I understand few complaints have been filed with the Commission.

I joined the chairman and ranking member of the full committee and subcommittee Chairman Carbajal in writing the FMC to urge vigorous enforcement of subtitle IV of title 46, popularly known as the Shipping Act, if any violations are found.

I hope recommendations for industry practices to deal with future cargo surges will emerge from today's hearing.

The health of U.S. agricultural exports are life and death economic issues in rural districts across America. Therefore, I would like to strengthen the system to assure sufficient capacity in the supply chain to protect U.S. ag exports in the future.

Thank you, Chairman Carbajal, and I yield back.

[Mr. Gibbs' prepared statement follows:]

Prepared Statement of Hon. Bob Gibbs, a Representative in Congress from the State of Ohio, and Ranking Member, Subcommittee on Coast Guard and Maritime Transportation

Thank you, Chair Carbajal, and thank you to our witnesses for being here today. Since the beginning of the traditional peak shipping season starting last August, United States ports have been experiencing a record surge in cargo imports. This surge is expected to continue at least through 2021, and some say into the second quarter of 2022. More than thirty container vessels routinely wait for space at the Ports of L.A. and Long Beach, and the Port of L.A. had its biggest month on record in May.

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This real-world pressure test of U.S. port capacity has led to container shortages for certain U.S. exports, particularly ag exports; pressure on intermodal rail connections; delays in receipt of merchandise for certain importers; shortages of chassis for drayage; and accusations of abuses regarding detention and demurrage charges—which I'll note—ocean carriers and terminal operators deny.

Prior to the container surge, the Federal Maritime Commission was already conducting Fact Finding #29 regarding detention and demurrage. I understand that Fact Finding is now also looking at container shortages in some export markets. I look forward to Commissioner Dye's update on the status of Fact Finding #29. I understand the Commissioner is the former Staff Director of this Subcommittee, and

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I hope recommendations for industry practices to deal with future cargo surges will emerge from today's hearing. The health of U.S. agricultural exports are life and death economic issues in rural districts such as Ohio's Seventh District. Therefore, I'd like to strengthen the system to assure sufficient capacity in the supply chain to protect U.S. ag exports in the future.

Mr. CARBAJAL. Thank you, Ranking Member Gibbs. I would now like to welcome the witnesses on our first panel.

First, we have the Honorable Daniel B. Maffei, Chairman, Federal Maritime Commission.

And second, we have the Honorable Rebecca Dye, Commissioner, Federal Maritime Commission.

Thank you both for being here today. I look forward to your testimony.

Without objection, our witnesses' full statements will be included in the record.

Since your written testimony has been made part of the record, the subcommittee requests that you limit your oral testimony to 5 minutes.

With that, we will commence with Chairman Maffei.

You may proceed.

TESTIMONY OF HON. DANIEL B. MAFFEI, CHAIRMAN, FEDERAL MARITIME COMMISSION; AND HON. REBECCA F. DYE, COMMISSIONER, FEDERAL MARITIME COMMISSION

Mr. MAFFEI. Thank you, Chairman Carbajal, Ranking Member Gibbs, and full committee Ranking Member Graves, and members of the subcommittee. I am also very glad to see the full committee chairman, Peter DeFazio. He was very kind to me when I was a Member of Congress. I won't necessarily assume he will be as kind to me in this new role.

I appreciate your invitation today, and I particularly appreciate how this subcommittee has paid attention to our ocean freight system. Some of the things I may say will sound repetitive, but that is only because you were so well informed in your opening statements.

Now, most of the time, of course, the public pays little notice to how ocean freight moves consumer goods, commodities, and manufacturers' inputs to and from our country. But now concern is growing, as the COVID pandemic and the ensuing record import surge threatens the reliability of the system and drives up costs.

When President Biden designated me Chair of the FMC on March 29th, the ocean freight system was already at or beyond capacity, with volumes up dramatically at virtually every port in America, and rates already at record levels. The cost of a container has gone up four times what it cost last year, and sometimes more. Just finding a space on a carrier is very difficult. And even if a

shipper's box does make it on the ship, there will likely be substantial delays in transit time.

Of particular concern to me is the increase in price and the shortage of available containers affecting exporters. While carriers are actually moving more exports, overall, than in previous years, the increase in exports does not match the boom in imports.

Moreover, the amount a carrier makes moving an import container is so much, compared to what they make on an export box. But in some cases, a ship will carry fewer containers full of exports than its capacity, to more rapidly move empty containers back to foreign ports to fill them with new, U.S.-bound imports.

So what is the FMC doing about all of this? Last year FMC unanimously approved the rule on detention and demurrage to make clear when assessment of these charges on a shipper is unreasonable and violates the Shipping Act. Last fall, the FMC increased the reporting requirements for the three major alliances of steamship lines to ensure that these carriers are not violating their agreements or the law.

Last fall, we also launched a formal investigation of issues examining detention and demurrage, container return requirements, and lack of containers available for export. This investigation is called Fact Finding 29, and is led by our most experienced Commissioner, Rebecca Dye, who, with my full support, is here to report directly to you.

Also, where appropriate, I and others have reached out directly to the carriers to persuade them that it is in their long-term best interest to accept as many exports as possible.

Finally, the FMC voted last month to implement our new National Shipper Advisory Committee so we can hear directly from shippers on an ongoing basis. That committee is half exporters.

There is always more to do, but it is vital to understand the true nature of this crisis to assess what the FMC can and can't do.

First, the difficulties are global. Congestion, reliability, and cost issues are hitting ports, businesses, and ocean-linked transportation networks, not just in America, but worldwide.

Second, the crisis does not just affect shipping, but the entire supply chain. Attention has been focused on the ports because this is where we see the dramatic pictures of ships lining up, and piles of containers. But outdated infrastructure, equipment, and labor shortages, rail issues, and limited warehouses all diminish our capacity.

And third, the primary reason for the congestion, high prices, and lack of reliability is the demand for cargo shipping has outstripped the supply. For years, the increasing supply of cargo space on bigger and bigger ships kept ocean freight rates on the low side. But now COVID and its effects have created record demand for shipping, and record freight rates, as well. The demand for imports will likely not diminish until 2022, as the ranking member pointed out. But the supply of space on ships has not increased enough to keep track with that.

Beyond these three factors—the global nature of trade, challenges throughout the supply chain, and the vast increase in demand—the Federal Government is limited in ways that it can help. Of course, we can do investments into infrastructure, both physical

infrastructure and informational infrastructure. We can put in more measures to get more information to shippers than they currently get, which would definitely improve efficiency. But these are not immediate solutions.

So, in the meantime, the FMC will continue to help exporters and other U.S. shippers navigate the system and file complaints. We will communicate with various stakeholders in the supply chain, and help them work together to make the system more efficient and reliable. We will keep in touch with Federal agencies and you in Congress, and we will stay open-minded to finding new ways of making the situation better, and we will work hard to make sure nobody makes a profit from this current crisis in a way that violates the Shipping Act.

And I know that Commissioner Dye will say a lot more on these efforts, so I thank you, and I look forward to your questions.

[Mr. Maffei's prepared statement follows:]

Prepared Statement of Hon. Daniel B. Maffei, Chairman, Federal Maritime Commission

Good morning Chairman Carbajal, Ranking Member Gibbs, and members of the Subcommittee. I appreciate having the opportunity to speak with you today about our ocean freight system.

The American economy is dependent upon ocean freight. Container ships move commodities, consumer goods, and inputs necessary for manufacturers. The events of recent months have highlighted just how critical overseas shipping is to all Americans and how invaluable the contribution of ocean transportation is to economic competitiveness and our way of life.

When President Biden designated me Chair on March 29, I stepped into the position in the midst of the largest import boom in U.S. history. Key U.S. gateways for container shipping have handled cargo volumes that have been high and frequently record breaking. The Port of Long Beach recently announced that it has had ten consecutive months of breaking cargo movement records.¹ Similarly the Port of Los Angeles reported the best April in the port's history and that the complex has set records for volumes six of the last nine months.² The Port of New York & New Jersey set a "new all-time monthly record" in March, superseding the one they set in just October 2020.³ The Port of Virginia set a new record in April for monthly volumes,⁴ South Carolina reported a record breaking April⁵, Georgia a record breaking March,⁶ and Oakland handled 100,000 import containers in a single month (April) for the first time in its history.⁷ In short, the system is at or beyond capacity.

With such high demand for overseas imports, container shipping prices have rocketed up. The Shanghai Containerized Freight Index indicated that for May average freight costs are three times as high as they were this time last year.⁸ An individual

¹"Strongest April on Record at the Port of Long Beach", Port of Long Beach Press Release, May 12, 2021 <https://polb.com/port-info/news-and-press/strongest-april-on-record-at-port-of-long-beach-05-12-2021/>

²"Robust April Volume Breaks Another Record at Port of Los Angeles", Port of Los Angeles Press Release, May 13, 2021 https://www.portoflosangeles.org/references/2021-news-releases/news_051321_aprilvolume

³"Strong Consumer Demand Drives March Volume to All-Time High", Breaking Waves Blog, Port of New York & New Jersey, May 5, 2021. <https://www.portbreakingwaves.com/strong-consumer-demand-drives-march-volume-to-all-time-high/>

⁴"All-Time Record Volume, Strong Service Levels Continue at the Port of Virginia", Port of Virginia Press Release <https://www.portofvirginia.com/who-we-are/newsroom/all-time-record-volume-strong-service-levels-continue-at-the-port-of-virginia/>

⁵"SC Ports handles record cargo volumes in April", South Carolina Ports Press Release, May 11, 2021 <https://scspa.com/news/sc-ports-handles-record-cargo-volumes-in-april/>

⁶"GPA's March container trade leaps 48 percent". Georgia Ports Authority Press Release, April 15, 2021 <https://gaports.com/press-releases/gpas-march-container-trade-leaps-48-percent/>

⁷"Port of Oakland passes milestone, sets all-time cargo record", Port of Oakland Press Release, May 13, 2021 <https://www.portoakland.com/press-releases/port-of-oakland-passes-milestone-sets-all-time-cargo-record/>

⁸Alphaliner Monthly Monitor, May 2021

shipper needing to find a container on the spot market will likely pay an even higher multiple. And cost certainly is not the only challenge. For many shippers, finding a container and/or space on a ship has been sometimes impossible at any cost. And many other shippers have not been able to get their products to foreign markets in a reliable timeframe or get goods manufactured abroad to their American customers without substantially higher than average delays.

Of particular concern to me is the effect of the import boom on U.S. exports and the increases in price and lack of availability of containers for export. While it may surprise some of you to find out that the carriers are actually transporting more containers of our exports than in previous years, the number pales in comparison to the boom in imports and there is some truth that ocean carriers will carry fewer containers of American exports than they otherwise would have in order to get empty containers more rapidly back to Asian ports to fill with higher value import loads.

Under my predecessor, then-Chairman Michael Khouri, the FMC had already started taking steps to address the many aspects of this crisis.

Last Spring, the Commission unanimously approved an interpretive rule on detention and demurrage. This measure had already worked its way through much of the rulemaking process before COVID hit but the Commission knew it could become even more important as the pandemic emerged. The rule addressed how the FMC will assess the reasonableness of detention and demurrage regulations and practices of ocean carriers and marine terminal operators (MTOs). The Commission stated it will consider the extent to which detention and demurrage charges and policies serve their primary purpose of incentivizing the movement of cargo and promoting freight fluidity.

Last fall, the Commission increased alliance reporting requirements and is considering whether additional changes are needed.⁹ Monitoring requirements might be further amended to demand more information and data of use to Commission economists, analysts, and lawyers in their work.

We have launched a formal investigation of issues at LA/LB and NY/NJ involving detention demurrage practices, container return requirements and lack of containers being made available for export. This investigation is called Fact Finding 29 and is led by our most experienced Commissioner, Rebecca Dye, and it could lead to a formal enforcement proceeding. Because it is an ongoing investigation, I am limited in what details I can give you. That said, one of the focuses of the investigation involves the Interpretive Rule on Detention and Demurrage which the commission unanimously put in place a year ago. We must make sure that rule is being heeded and, where it is not, we will bring enforcement actions. being heeded, root out the non-compliance.

Once I became Chairman, I was able to help the FMC build on these existing efforts in several ways:

- 1) As Commissioner Dye's investigation got to the stage of analyzing data from the carriers and potentially developing enforcement cases—I made sure that she has the appropriate staff resources that she needs. This investigation is a vital part of the FMC's overall effort to deal with this crisis and that is why I am so glad that you have invited Commissioner Dye as well so she can give you a report on the progress of that investigation. Know that she has my full trust as the investigation officer.
- 2) I have started examining the industry response to last year's detention and demurrage rule to determine whether additional rulemaking would be useful in deterring the sort of practices that seem to be making the current situation worse. Personally, I want to look at the billing and appeal policies for detention and demurrage (D&D) charges, issues involving where & when containers can be returned, and rapidly shifting Earliest Return Dates (ERDs) which can become unworkable for exporters.
- 3) I am also taking a good look at the way the FMC enforces the authority Congress has provided, and have provided some preliminary direction. It is vital that our enforcement capability provides a sufficient deterrent to abusive practices in the industry. I have directed the career staff at the Federal Maritime Commission to be open minded in applying the authorities we do have to make things better. Circumstances are different today and just because the FMC has not taken certain kinds of enforcement action in the past does not mean we should not now.

⁹“Federal Maritime Commission Increases Global Alliances’ Information Monitoring Report Requirements”, Federal Maritime Commission Press Release, November 25, 2021. <https://www.fmc.gov/federal-maritime-commission-increases-global-alliances-information-monitoring-report-requirements/>

- 4) Where appropriate, Commissioners are reaching out informally to carriers and terminal operators to encourage the industry to be as flexible as possible given the situation. As we have spoken to companies depending on ocean shipping, shipping groups, and their members, we have relayed their general concerns and observations to the carriers. We have also done outreach to other supply chain stakeholders such as truckers, retailers, port authorities, terminal operators, and labor unions.
- 5) The Commission recently voted to implement our new National Shipper Advisory Committee. This will be a body of 24 shippers—divided equally between importers and exporters—who will advise the Commission on policies relating to the competitiveness, reliability, integrity, and fairness of the international ocean freight delivery system.

The steps that I list here is not an exhaustive list and, if members want to suggest additional actions, I would welcome suggestions.

That said, it's important to understand that the nature of the current crisis and the ocean freight system make it impossible for the FMC—or even the U.S. government—as a whole—to alter or counteract much of the current situation.

First, the difficulties are global. Congestion, reliability, and cost issues are impacting ports, businesses, and ocean linked transportation networks not just in the United States but in Europe, Asia, the Indian Sub-Continent, Australia. Point to a spot on the map and you will find a portion of the world's ocean cargo system struggling. Problems overseas create problems here and vice-versa. That is of no comfort to a U.S.-based importer or exporter trying to move their cargo, but it does point to the enormity of the underlying problems. It also illustrates that solutions, if there are any to be had, will not be U.S. derived ones alone.

Second, the crisis is really one that does not just affect ocean shipping but goes up and down an interconnected U.S. supply chain. Attention has been focused on ports but that is because this is where inefficiencies with our freight transportation networks manifest themselves in pictures of large container ships lining up and bigger and bigger piles of containers. However, issues related to increased port congestion and diminished ocean carrier performance stretch far from the dockside of any marine terminal and deep into the United States interior. Insufficient landside infrastructure, whether roads or rail, means cargo cannot move. A lack of chassis, trucks, or truck drivers means cargo cannot move. Warehouses and distribution centers that are full means cargo has no place to go, and therefore cannot move. The underlying issues that are causing congestion in the freight delivery system are not new. Current events have only put into stark relief what are the systemic flaws and shortcomings in the Nation's freight transportation capabilities.

If an interconnected system becomes overwhelmed, a problem in one part of it becomes a compound problem. The once in a century snowstorm in Texas disrupted rail traffic for six weeks causing issues related to the availability of intermodal rail cars to serve Southern California ports.¹⁰ A crack in the I-40 bridge over the Mississippi River takes out an important intermodal truck route to and from railheads in Memphis and the time and expense added to ground moves ripples at the ports.¹¹ Congestion at Mid-West container yards causes a loss of income for drivers and they quit in frustration, potentially reducing the capacity to move containers.¹² These are just some of the issues that happen far from a port but impact operations at marine terminals and the ability to handle ocean containers. They contribute to congestion, diminish capacity, erode capability, add costs, and exacerbate problems everywhere.

Third, the primary reason for the congestion, high prices, and lack of reliability is that the demand for cargo shipping has outstripped the supply.

For years, the increasing supply of space with the continued ordering of bigger and bigger ships kept ocean freight rates on the low side. And now it is COVID-induced demand that is largely the reason for the high freight rates. The drop in cargo volumes for the first half of 2020 dramatically reversed beginning in July or August of 2020 when American consumers began an unrestrained buying spree that continues today. Ports that lost volumes in early months of 2020 ended their years equaling their 2019 totals. In other words, a large portion of 12 months of volume

¹⁰“Dallas intermodal ramp flows recover after paralyzing winter storm”, Journal of Commerce, Ari Ashe, May 26, 2021 https://www.joc.com/rail-intermodal/class-i-railroads/bnsf-railway/dallas-intermodal-ramp-flows-recover-after-paralyzing-winter-storm_20210526.html

¹¹“Memphis’ cracked I-40 bridge creates headache for traffic, shipping”, NBCNews.com, the Associated Press, May 12, 2021 <https://www.nbcnews.com/news/us-news/memphis-cracked-i-40-bridge-creates-headache-traffic-shipping-n1267187>

¹²“US drayage drivers quitting as rail ramp congestion crimps pay”, Journal of Commerce, Ari Ashe, May 19, 2021 https://www.joc.com/trucking-logistics/drayage/drayage-divers-quitting-rail-ramp-congestion-crimps-pay_20210519.html

moved in what turned out to be an approximately four-month period. The demand for imported goods has not waned and all indications are that demand will not diminish until 2022 at the earliest.

Meanwhile, the supply of space on ships has not increased enough to keep pace. If this supply were being artificially limited by the carriers, there would be a clear path for the Federal Maritime Commission and/or the Justice Department to intervene. However, all indications are that the lines are trying to increase their capacities as quickly as possible. According to an Alphaliner report published in May 2021, there are only 60 idle ships representing less than 1% of the world's available container ship fleet. Also, reports that the order book for new builds represents another 4 million TEU of capacity, approximately 18% of the current world's fleet total capacity. Similarly, ocean carriers and intermodal equipment lessors have been buying new containers to increase the supply of boxes available to ship goods. Furthermore, we have seen increased use of extra loaders, additional capacity on strings, and vessel sharing agreements that have resulted in some expanded capacity. These are all positive developments they simply are not that substantial when compared with the overwhelming demand.

Because of these three factors—global nature of trade, integrated nature of the supply chain, and the largely demand driven causes—we are limited in what can be done.

We can put in measures to improve the overall capacity of the system—increase the supply in the supply-demand chart. Certainly, efforts to improve our physical infrastructure at our ports but also rail, truck networks, and inland ports would greatly improve capacity of the system.

Another initiative is to convene parties across the supply chain to establish better data sharing. One way to prevent bottlenecks, especially at facilities that are limited in ability to grow, is to have better communication about ERDs, container availability and key other key operational information. Such transparency would assist preventing avoidable D&D charges, and help shippers adjust their schedule. Shippers need more information than they currently get and providing it to them can only help the freight delivery system. I believe there is a role for the FMC to act as a convener and possibly to formulate incentives to encourage the adoption of more open data and information policies among carriers, terminals, ports, and land transportation.

However, improvements to our physical and informational infrastructure are long-term solutions that will take years to develop.

In the meantime, I as Chairman and the Federal Maritime Commission have been getting pleas to force carriers to provide more export containers, ban all detention and demurrage charges in certain ports and DO something about these outrageously high prices including revoking the limited anti-trust exemption for carrier alliances. I cannot help but empathize with the frustrations of shippers and beneficial cargo owners—many of which are small and medium-sized businesses. When I served in Congress, I represented a district with agricultural exporters and know how vital it is that they can transport their goods to foreign markets.

Nonetheless, the legislation governing ocean shipping and determining the powers of the Federal Maritime Commission limits the actions we can take. The law allows us to take action against a carrier or terminal if they engage in a prohibited anti-competitive behavior, discriminatory practices against U.S. companies or products, unlawful deception, or some other unreasonable practice. It allows us to take action against an alliance of carriers but only under certain circumstances when the alliance has broken its own agreement or is clearly resulting in an unreasonably higher price or lower level of service than otherwise would be the case.

The law does NOT allow us to set rates or set a ceiling for what it costs to move an ocean container. It does not allow us to demand that ships service certain ports, carry particular products, or establish a quota for the number of export containers it must accommodate. If a sky-high cost for shipping a container is due simply to the laws of supply and demand, we have no authority to change that.

What we can do and are doing is to work hard every single day to make sure nobody makes a profit from this current crisis in a way that violates the Shipping Act. We can help exporters and other U.S. shippers navigate the system and file complaints. We can communicate with various stakeholders in the supply chain to help them work together to make the system more efficient and reliable. And we can stay in close touch with other agencies of the Federal government and you in the Congress to find new ways of making this COVID pandemic and its aftermath easier to live with.

I am happy to take your questions.

Mr. CARBAJAL. Thank you, Chairman Maffei. And now we will move to Commissioner Dye.

You may proceed.

[Pause.]

Mr. CARBAJAL. Commissioner Dye, you may proceed.

Ms. DYE. Thank you. Thank you so much, Mr. Chairman, Ranking Member Gibbs, Chairman DeFazio, and Ranking Member Graves. Of course, members of the subcommittee. I am pleased to be with you today to discuss my Fact Finding 29 investigation dealing with the effects of COVID-19 on the United States international ocean freight delivery system.

Thank you for your support of the Commission's National Shipper Advisory Committee, enacted as part of the Elijah Cummings Coast Guard Authorization Act. We are currently soliciting for 12 exporters, and 12 importers for the committee. I have included a summary describing my investigation to date as part of my testimony today.

The Fact Finding 29 investigation is my fourth major Commission investigation, and I very much appreciate the strong support I have received from Chairman Maffei.

My focus in Fact Finding 29 is how to strengthen the performance of the overall United States international freight delivery system. This requires closer coordination and visibility among exporters, importers, truckers, ocean carriers, marine terminals and ports, longshore labor, railroads, chassis providers, and shipping intermediaries.

There are three major obstacles to resolving this port congestion hardship. The problems we are experiencing are not new. They occur in every cargo surge or peak season. No supply chain actor alone, not ocean carriers or ports, can develop a solution without a coordinated approach with other supply chain actors. The lack of mutual commitment between parties to freight delivery systems keeps parties from achieving enforceable agreements.

The Commission order on Fact Finding 29 authorizes me to form FMC Supply Chain Innovation Teams to develop commercial solutions to port congestion and related supply chain challenges. Fact Finding 29 used 9 small teams to identify several major supply chain bottlenecks for future work. These small teams are composed of industry leaders with the knowledge and experience and, most important, the willingness to work to change the system. I hope to convene these teams in person in the near future.

I would like to emphasize one final thing about the current state of Fact Finding 29, and the Supplemental Order the Commission issued to me last November. Our Bureau of Enforcement staff are currently investigating cases of potential unreasonable and detention charges involving the most common situation affecting exporters: confusion concerning the earliest return date. More investigations will follow, perhaps involving other potentially unreasonable practices.

No further regulatory or statutory action is necessary for us to enforce the Commission's demurrage and detention rule. We do require, like any other law enforcement agency, facts to investigate a potential violation. Our Bureau of Enforcement needs just evi-

dence, a brief description of facts surrounding a potential violation, and a bill of lading number to begin an investigation.

Finally, Mr. Chairman, our U.S. international ocean freight delivery system is unprepared to deal with growing volumes of cargo going through our major ports. If we don't change, we can't grow.

In 2017, our FMC Supply Chain Innovation Teams recommended a national port information system to provide end-to-end visibility in our international ocean freight delivery system. Now is the time to move forward with this recommendation, harmonize our supply chain, leap over existing problems, and boost American competitiveness and our economy.

Thank you, Mr. Chairman. I would be glad to discuss my preliminary recommendations from my investigation with you and, of course, answer your questions. Thank you very much.

[Ms. Dye's prepared statement follows:]

Prepared Statement of Hon. Rebecca F. Dye, Commissioner, Federal Maritime Commission

Thank you, Chairman Carbajal, Mr. Gibbs, and Members of the Subcommittee. It is a pleasure to be here with you today, to discuss my Fact Finding 29 Investigation, dealing with the global effects of COVID-19 on the U.S. international ocean freight delivery system.

Thank you for your support of the Commission's National Shipper Advisory Committee, enacted as part of the Elijah Cummings Coast Guard Authorization Act. I plan to recommend an FMC Advisory Committee for ports and ocean carriers as one of my upcoming Fact Finding 29 recommendations to the Commission.

I have included a summary describing our Fact Finding 29 Investigation to date, as part of my testimony today.

The Fact Finding 29 Investigation is my fourth major Commission investigation and I appreciate the strong support I have received from Chairman Maffei.

My focus in Fact Finding 29 is how to strengthen the reliability and resilience of the U.S. international freight delivery system. This requires the involvement of everyone engaged in international ocean freight delivery, including exporters, importers, truckers, ocean carriers, seaports, longshore labor, marine terminals, railroads, equipment providers, and shipping intermediaries.

There are three major obstacles to resolving the major port problems identified by our ten Innovation Teams in Fact Finding 29:

- 1) These problems are not new. They occur in every cargo "surge" or "peak season;"
- 2) No supply chain actor alone can provide a solution without a coordinated approach; and
- 3) The lack of mutual commitment between parties to freight delivery agreements mitigates against an enforceable agreement.

Our primary approach to resolving these problems is our FMC Supply Chain Innovation Teams. These teams are composed of industry leaders with the knowledge and the experience and, most important, the willingness to work to change the system. I hope to convene in-person teams in the near future.

I'd like to emphasize one final thing about the current state of Fact Finding 29 and the investigations ongoing under the Supplemental Order the Commission issued to me last November.

Our Bureau of Enforcement staff are actively investigating cases of potential unreasonable demurrage and detention charges involving the most common situation affecting exporters. More investigations will follow, perhaps involving the other potentially unreasonable practices under section 41102(c) of title 46, United States Code, formerly section 10(d)(1) of the Shipping Act of 1984.

No further regulatory or statutory action is necessary for us to enforce the Commission's Demurrage and Detention Rule interpreting section 41102(c), which already requires common carriers and marine terminal operators to establish, observe and enforce reasonable practices.

We do require, like any other law enforcement agency, facts involving a potential violation. Our Bureau of Enforcement and investigators simply need evidence, such

as a bill of lading number, and a brief description of facts surrounding a potential violation to begin an investigation.

Finally, our U.S. international ocean freight delivery system is unprepared to deal with the growing volumes of cargo, fueled by ecommerce, imports and exports, flowing through our major ports.

Mr. Chairman, if we don't change, we can't grow.

In 2017, our FMC Innovation Teams recommended a National Port Information System to provide end-to-end visibility in our international ocean freight delivery system.¹

Now is the time to move forward with this recommendation, harmonize our supply chain, leap over existing problems, and boost American competitiveness and our economy.

Thank you, Mr. Chairman. I will be glad to answer your questions.

Mr. CARBAJAL. Thank you, Commissioner Dye. We will now move on to Member questions. Each Member will be recognized for 5 minutes. And I will start with Chairman DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman, I appreciate the opportunity. And listen, I want to commend you for the work that you did for the Commission's rule. It provided for demurrage and detention guidelines, so ocean carriers can know what is reasonable, what is not.

But I am told by many shippers that the detention and demurrage rule is very good, but we also find that the carriers continue to issue the same demurrage and detention charges, which the rule declares to be unreasonable.

And you just said you don't need further authority. How do we get enforcement?

Ms. DYE. Well, I have a couple of recommendations. It is unfortunate that the good carriers are going to suffer, as well as the ones that we know are not following the rule. How do we know? Because they tell their customers, who immediately tell us.

Plus, we had a huge information demand. We will follow those up with law enforcement interviews from all of them.

I am going to recommend that all of our ocean carriers have what corporate organizations have called compliance officers, someone who can work directly with us, not part of their general counsel's office, who is accountable and responsible for Government compliance.

And there are a couple other recommendations along those lines, but, as I said, we didn't get as many complaints as we wanted, because our exporters are concerned about retaliation.

Mr. DEFAZIO. Right.

Ms. DYE. Now, I can assure you and the members of the subcommittee and all of my export colleagues that that is a violation of the Shipping Act, currently. And we would take prompt and decisive action if we heard about any carrier actually retaliating against any exporter or any other supply chain actor for coming to the FMC. So we encourage them to provide us with the complaints and, as I said, we are going to continue our law enforcement actions.

And also, I haven't—this is very resource-intensive, and so I haven't actually discussed this with the Chairman, fully. But I believe we also need regular Bureau of Enforcement audits of ocean

¹ <https://www.fmc.gov/wp-content/uploads/2019/03/SCITFinalReport-reduced.pdf>

carriers, especially for demurrage and detention, so we can continually be aware of their behavior.

Thank you so much, Mr. Chairman.

Mr. DEFAZIO. Yes, I have heard the same thing about intimidation. I appreciate your strong words.

Ms. DYE. Of course.

Mr. DEFAZIO. That is a very clear violation, and that you will, in those cases, take action.

Can FMC—and this is either to you or the Chair—can you self-initiate?

Ms. DYE. Yes.

Mr. DEFAZIO. You can self-initiate?

Ms. DYE. Yes. In fact, we are doing it now.

Mr. DEFAZIO. OK.

Ms. DYE. We got started—

Mr. MAFFEI. Yes—

Ms. DYE. Please go ahead, Mr. Chairman.

Mr. MAFFEI. Yes, we can self-initiate. And I might add that I think self-initiating, in some cases, is essential here, because one of the things that would help bring more cases from those shippers and private parties is if they saw that they could actually win cases, and how to win those cases. And so, naturally, they may not want to stick their neck out to be one of the first ones, but once we show that—there are also some other rules that we have that I do think would make it easier.

I have said for a long time that the way we interpret this particular part of the Shipping Act, we require that a plaintiff prove that the wrong occurred on a “normal, customary, and continuous basis.” So if they can prove it happened, but it only happened once, or even a couple of times, but the carrier can say, “Look, you know, that wasn’t our actual practice, that was just a mistake,” they might not win the case. They probably wouldn’t win the case. So that also could be changed.

But, as Commissioner Dye points out, we do already have that authority. It may be useful to have Congress weigh in, but we do have that authority already.

Mr. DEFAZIO. OK. Well, thanks.

Mr. Chairman, I regret that I am not going to be—I have, unfortunately, an appointment which I must keep shortly, so I won’t be able to hear much of the second panel. But I am hoping to hear interesting ideas and potential solutions from them, and also at any point from the Chair or Commissioner Dye, because we just can’t continue down this path.

Thank you, Mr. Chairman.

Mr. CARBAJAL. Thank you, Chairman DeFazio. Next we will move on to Ranking Member Gibbs.

Mr. GIBBS. Thank you, Chairman. Thank you to the witnesses for being here.

I have a chart I find kind of interesting. It is the Port of Los Angeles monthly container volumes, and it has 2019, 2020, and 2021, now. And, obviously, we saw a drop-off in 2020, the first 6 to 7 months of the year, from 2019, and then a surge happened in late July, early August of last year, and the surge continues, and the

surge continues here through April of this chart, significantly higher in 2019.

So I guess my first question is, do you see structural changes in our supply chain where you could anticipate that these volumes of cargo are going to stay where they are at, or do you think they will come back down after we work through some backlogs? Or do you think there has been enough consumer behavioral changes, and just dynamic changes, that we are going to see higher volumes, consistently higher than what we had in 2019, before the pandemic?

I guess I would ask the Chairman first.

Mr. MAFFEI. Thank you, Ranking Member Gibbs. Yes, you are quite right. Most ports in this country have seen about 12 months of cargo volume go through in about 4 months. And a lot of that is due to backlog. But it is also due to a continually high demand.

Of course, it always depends exactly what you mean by structural changes, but I don't see anything structural. I think a lot of this has to do with our economy, which, you know, thanks in part to Congress, and the former President, and the current President, you have kept very strong, and the demand for exports, as people were sitting at home. The problem is now they are demanding exports because they are going back out in the world, and seeing each other.

And my 7-year-old daughter is probably going to get twice as many Christmas presents this year, because last year her grandparents couldn't see her, and this year they can.

So, for all of those reasons, I expect demand to continue to be high into next year. But the structure hasn't changed. And indeed, this is a volatile industry. As Commissioner Dye pointed out, it has always had highs and lows, and will, indeed—the rates will eventually come down as the demand goes down.

Mr. GIBBS. OK, so you are saying—you said the rates are going to come down? We have seen rates, in some instances, like triple-digit increases in the rates.

Mr. MAFFEI. They may still go up more before they go down, but they will eventually go down.

Your question with—is there some sort of structural change in the way imports and exports work, and I don't think so. I think this particular pandemic is—we have never had anything like this in the history of modern shipping, and so it is an anomaly. I don't think it changes the overall economics of trade.

Mr. GIBBS. Yes, also, a question came up about maybe we have more limited hours of operation in our ports in the United States, compared to our ports around the world that maybe work 24/7. Is that true, that our ports don't work 24/7, or is that an issue?

Mr. MAFFEI. Yes, certainly compared to countries like China, with different labor systems, et cetera.

But—and it would be helpful, I think—I was just in the New York-New Jersey Port last week, and they do have extended hours, and are going into weekends as needed. Part of the problem is a chicken-and-egg problem. If they open up the port for more hours, sometimes people aren't used to going, and then they stop, and the trucking companies and the shippers don't necessarily adjust their

schedules permanently, unless they know it is going to be permanent. So you have got that little issue there.

But it would certainly help. It wouldn't be the be-all and end-all, though, because up and down the supply chain—

Mr. GIBBS. I am running out of time, so I want to jump over to Commissioner Dye.

With your Fact Finding 29, are you seeing ways you think that we could squeeze more capacity out of our ports and our intermodal relationships?

Ms. DYE. Well, Mr. Gibbs, I just wanted to add one—concerning capacity, I just wanted to add one thing to the Chairman's remarks.

I found, from an organization called Sea-Intelligence—they are a very well-regarded organization, and they believe that the boom and United States demand is not declining. It may be softening in the rest of the world, interestingly. But if that is the case, then our ocean carriers, who can move their ships anywhere to get cargo, may increase their capacity in the United States trades. And that will be good for the demand.

Mr. GIBBS. Thanks. I have just got one quick question I want to get into. Ms. Dye, our smaller shippers are facing huge freight rate increases and outright refusal to deal with the shippers. What action has the FMC planned to address concerns of smaller shippers, so they don't get pushed out of the market?

Ms. DYE. Yes, Mr. Gibbs, I know, as far as those violations of the law are concerned, our general counsel is very seriously considering all of those allegations.

But as far as small shippers go, there is a very unused section of the Shipping Act concerning shippers associations. We encourage our small shippers to band together to leverage their cargo volumes, and get better rates and other things of—the parts of service that they may want to get for motion carriers. So thank you for that.

Mr. GIBBS. Thank you, Mr. Chairman, for your indulgence. I yield back.

Mr. CARBAJAL. Thank you, Mr. Gibbs.

Mr. Maffei, we have recently gotten reports of shipping companies refusing to carry cargoes, charging excessive detention and demurrage fees, and canceling contracts. Do these actions violate the Shipping Act?

If so, why hasn't the FMC taken more meaningful action?

Mr. MAFFEI. I mean, it certainly depends on the circumstances of all of those different actions. But I am very concerned that many of those things are violations of the Shipping Act, particularly if a carrier is refusing to even offer a container at any price to an exporter. That, to me, is refusing to deal.

And I should say that these are my own opinions. I would not drag Commissioner Dye, necessarily, into these or the full Commission. It is a Commission of five independent members. But my own opinion is that would be a violation of the Shipping Act.

I also think the detention and demurrage practices that we have seen, at least the ones we have heard about, are certainly violations.

And in terms of the contracts, that is a little more tricky. I will say that the Commission is not allowed to, according to the current Shipping Act, adjudicate whether contracts have been broken. You may want to take a look at that. I do believe that the Commission should maybe have a bigger role in reviewing contracts for clauses that are violations of the Shipping Act, and it may be helpful if there—you know, in practice it is more blurry about whether something is a contract violation or a violation of the Shipping Act within the contract.

In terms of what we are doing, Commissioner Dye is running a very vigorous investigation of all these things. You have to have evidence. There is the Administrative Procedure Act. We do have to present evidence in court. We do have to be able to prove that these things are violations. And the law is fairly vague about what it means to be reasonable, so those things do take some time. But I have every confidence in Commissioner Dye and our team, that we will get to the bottom of all of these instances.

Mr. CARBAJAL. Let me continue on that. Why has it taken so long for the FMC to get more involved and yield a better result to date?

And, two, what can we do to enhance the communication with the shipping carriers to get to a better result?

Mr. MAFFEI. Yes, why has it taken so long to resolve?

We have been working hard since the beginning. I think that it is difficult for these things to emerge. Again, there are these barriers. They are not in a law, but there are certainly barriers, like fear of retaliation, that is keeping individual shippers from filing their own complaints. They don't have to wait for us, but they are not doing it, so that then we definitely want to step in.

I do think that resources, when you have this much information flow coming in, resources are important. I made sure, as soon as I became Chairman, that Commissioner Dye had the exact people that she needed, and the resources she needed. But, like her—and we have discussed this—I would like to do a full audit of each and every of the nine main container lines, a forensic audit, whether or not we have gotten complaints about them, particularly on their detention and demurrage practices, to sort of see what they are doing in terms of billing, in terms of other kinds of things that are causing havoc for the shippers.

But I don't know if we have the resources for that. So that is part of it.

In terms of what we can do to make things more accessible, we do have a Department of Consumer Affairs and Dispute Resolution Services. It can be very effective. But to be perfectly honest with you, most of the calls it gets are from passengers, not from shippers. And so I have been looking into ways to make it more—people—more communicating with shippers and truckers.

One thing I will do, if I can make sure I can get enough consensus—but I think I can—is to have a particular go-to person, probably based in CADRS, where, particularly, exporters can go, call that one person, and that one person will be an expert on various things they can do, and all of their options.

Another thing we can do is try to publicize better our CADRS program. It is always a little thorny when Federal agencies pub-

licize themselves, but I do think that that would be helpful, if we can do it in a targeted way.

Mr. CARBAJAL. Thank you. In your testimony you said that you “want to look at the billing and appeal policies for detention and demurrage charges.” How is this different than Commissioner Dye’s Fact Finding 29?

Mr. MAFFEI. It isn’t different. I think it works with her fact-finding, as well. But basically, her factfinding is an investigative factfinding.

And I would also want to look into what we can do to maybe clarify things further.

There have been some proposals out there that we do an additional rule on detention and demurrage, and I think that might be valuable. It wouldn’t necessarily—we would need to still do all the similar enhancements in our enforcement capability. But things like sending bills out on detention and demurrage, billing a—

[Unmuted indistinct voice.]

Mr. MAFFEI. I am sorry, billing a shipper—

[Unmuted indistinct voice.]

Mr. MAFFEI. I am sorry, can I be heard OK?

Mr. CARBAJAL. Yes.

Mr. MAFFEI. OK, I will sit a little closer, just in case.

But we want to—you know, these carriers sometimes bill a shipper, and we don’t believe, sometimes, that—or at least the shipper doesn’t believe that they should have been billed, because the detention and demurrage is unreasonable. So they complain, and they go through a big complaining process.

And indeed, in the end, the carrier often says, “Oh, we were wrong, sorry,” but they sent the bill out, they had a fairly complicated appeal system. I think that, in itself, may be unreasonable. If it is unreasonable to make the charge, then it is unreasonable to send the bill, except in very rare instances.

And so that is one thing that both Commissioner Dye and I have discussed what we can do about that.

Mr. CARBAJAL. Thank you. I am running out of time here, so I am trying to get one last question in here for Commissioner Dye.

Mr. MAFFEI. My memory is the chairman never runs out of time.

Mr. CARBAJAL. It is true, but we try to adhere to the timeframe.

Ms. Dye, in the second panel Ms. Jacobson is going to testify that, even after containers have been loaded on the terminal dock, carriers have changes, return dates, which incur demurrage charges. That seems unreasonable to me.

Why hasn’t the FMC addressed this issue?

Ms. DYE. You are exactly right, Mr. Chairman. The confusion between ocean carriers and marine terminals persists, and exporters get caught in the middle. This is one of the four major problems that our nine teams addressed at the beginning of the factfinding.

So, since this is the major problem for exporters, the investigations that our Bureau of Enforcement is conducting now, features in this problem. And so, we look forward to the results of the investigation, because we decided that this was—I am not involved in the actual investigations, or the choosing of carriers who may be investigated. But I did insist that this problem with earliest return date and demurrage unreasonably, potentially, in these situations,

should be our highest priority. And we have already started those investigations [inaudible]. Thank you.

Mr. CARBAJAL. Commissioner Dye, what other authority does the FMC need in order to enforce your demurrage and detention rule in an expeditious manner?

Ms. DYE. I don't believe we need any more. We will work with you on whatever you would like for us to consider. But I don't think that we need more.

We decided to use an interpretative rule, because it is flexible. For instance, we have heard about waivers that many carriers have granted on demurrage and detention in certain circumstances, and we didn't discuss waivers in the rule itself. But obviously, a complete waiver during congestion is reasonable.

And so I will be delighted to talk to you more about this, but I think we are OK for now. Thank you.

Mr. CARBAJAL. Thank you, Commissioner Dye. I do encourage you and your Commission to give that a little bit more thought, because, at the end of the day, if there is delay, it comes back to you, saying you need no more authority, you got everything you have—

Ms. DYE. Yes, sir.

Mr. CARBAJAL. And yet delays occur. It is going to be back on you. So I really encourage you to give that question a little bit more thought.

Ms. DYE. Thank you, Mr. Chairman.

Mr. CARBAJAL. With that I would move on to Representative Lowenthal.

Mr. LOWENTHAL. Thank you, Chairman. My first question is for Chairman Maffei.

First of all, it is good to see you, Mr. Chairman. We served together in the Congress before, and I am just honored to watch your progression at the FMC.

My question is just some elaboration of what you have already talked about. Through this pandemic, have you received the support and the encouragement that you need from both the ocean carriers and the terminal operators? Have they been supportive of your investigatory process?

Mr. MAFFEI. Well, thank you for the question, Congressman Lowenthal. It is great to see you, as well. I do hope to get out to Los Angeles at some point in the near future, now that this pandemic has lifted somewhat, sometime this summer.

I would say that they have definitely made themselves accessible to us. I don't think there is any doubt about that. When myself—we call—try to get on the phone, it may take a day or so, but we usually can get not only the U.S. CEO, but usually the global CEO on the phone.

Whether they have given us support, I think it is difficult for me to try to put myself into their place. What they say is, basically, they will talk about how what they are doing is for economic reasons, and then particularly a question like exports, which I have made a couple of rounds of calls, I will argue that, OK, well, it might cost you a little bit for that opportunity cost of that empty container, but in the long run you will have a better, more reliable export customer. And frankly, you will look better to the Congress

and the American public, and that will help both your line and the industry.

I would say they are pretty receptive to that. But these are big organizations, big businesses, and you don't always get that receptiveness trickling down to every level of the company. So while I would say that they have been receptive and supportive—it is deeds, not words. We need to do what Commissioner Dye is doing, and we need to keep the pressure on them, in terms of making sure that we are scrutinizing the carrier lines, to make sure there is no violation of the Shipping Act, and the alliances.

Mr. LOWENTHAL. Thank you. Before I get to Commissioner Dye—I have a question for her—I just wanted to say that I do represent the Port of Long Beach. And during this pandemic, I just want to say, the ports, our partners in labor, and so many others have worked heroically during this crisis. Large amounts of the pandemic have impacted our ports, yet they have come through.

We need more investments in ports, as Chairman DeFazio has said. And I am hoping that the FMC moves forward swiftly, and if there are bad actors, holds them accountable. And I am hoping that with our reopening and our global vaccine efforts, we are going to restore stability throughout the world.

I mean, we are still not out of it. But I want to make sure that our system is resilient, and I am going to ask some of the others in the second panel about that resiliency.

But Commissioner Dye—and I understand that you are not able to comment on the ongoing investigation—but can you provide the committee with when we can expect to hear the findings, or the conclusions from your findings?

Ms. DYE. Well, we really haven't set—the order to me from the Commission doesn't have a date, because we had no idea, and still don't really know how long the pandemic will last. In the very beginning we were engaged in getting storage at ports for cargo that was on the water. There was nowhere to put it, because we were closed.

And so there have been several phases of the investigation. I am free to discuss my own recommendations, several of which the Chairman has mentioned. Of course, those would take final Commission action. But my team is working expeditiously, and you can be sure that we are not dragging our feet.

Mr. LOWENTHAL. Good, good.

Ms. DYE. One thing that I wanted to point out, I believe in rewarding good behavior, as well as bad behavior. And several of the ocean carrier CEOs, U.S.A., have had rolled up their sleeves and gotten very involved in helping us, the major ocean carriers, especially on the problems with container return. And we always appreciate that, want more of it.

Mr. LOWENTHAL. Here is a question. It may be very oversimplified. Both you and the Chairman have talked about some of the violations, or the problems with detention and demurrage charges. Can you elaborate for the committee? What specifically have you been hearing about those kinds of violations?

Ms. DYE. I can emphasize to you that, if we were going to roll out—one of the largest things, one of the most major things the FMC has ever done, for the first time in the world, these charges—

shippers everywhere I have ever been, internationally, complained bitterly about these charges, and we took it on.

But we certainly would not have chosen to roll it out during a pandemic, when everybody was working from home, and we were unable to travel to talk directly to companies about the rule.

But I think that it is clear, and, as I said, we are taking—because we didn't get factual complaints that are necessary to move forward in investigations from very many entities, I think—

Mr. CARBAJAL. Thank you, Commissioner Dye. If you could just wrap up—

Ms. DYE. OK, sorry.

Mr. CARBAJAL [continuing]. We have to move on.

Ms. DYE. Of course, of course. But we are moving forward. Thank you, Mr. Lowenthal.

Mr. LOWENTHAL. Thank you, and I yield back.

Mr. CARBAJAL. Thank you. We will move on to Representative Brownley.

Ms. BROWNLEY. Thank you, Mr. Chair. I appreciate you allowing me to be here today. This is not my normal committee, but I am here because of my farmers in my district.

My district in Ventura County in California is heavily a farming community. And many of my farmers rely on export markets, and are paying triple the price. So I know that FMC is supposed to ensure fair shipping practices. We are talking about that.

So I just—my question is, is FMC doing anything around agriculture, specifically in terms of trying to resolve these high prices?

We do feed our country.

Mr. MAFFEI. Yes, Congresswoman Brownley, you certainly do. I am not sure if you remember, but when I was in Congress, my district, which had a city in it, but also had substantial agricultural exports—I am from New York, but I am from upstate New York, and we had a lot of dairy, soybeans, and other kinds of fruit, particularly apples. So I really empathize with these exporters.

We are trying to do things in terms of—I mentioned the calls that I am making, and I mentioned that we are taking very careful scrutiny about whether carriers are refusing to deal. They are not allowed to do that. You have to at least make a container available.

That said, though, it is important to note that, while in the purposes section of our legislation it does say that we are to promote the growth and development of United States exports, it says that we are to promote the growth and development of exports through competitive and efficient ocean transportation, and by placing a greater reliance on the marketplace.

The 1984 act was enacted at a time of deregulation and reliance in the marketplace. And, by and large, it has worked for us, in that one of the reasons why exporters have been able to succeed is that shipping rates have been relatively low through most of the last 20 years.

That said, though, now that they are much higher, we don't have very many tools to address those costs. It would be—we were not allowed to interfere in the market, or set rates. And so that can be very frustrating for someone like me, who does very much value those exporters, and trying to find a way to help them.

Certainly, the stuff we have already discussed about improving our consumer affairs outreach to exporters so that we can take each—each individual exporter may have very different circumstances, depending on what they grow, and where they are in the country, et cetera. But we can at least give them individual guidance as to what their options are. But we are a little bit tied by that provision, for better or worse, but the provision that keeps us out of the market, from interfering in the market.

Ms. BROWNLEY. Thank you. Thank you for that. And, by the way, it is good to see you, and thank you for what you are doing in your position today.

I guess the other question that I have is, do you do any kind of engagement with the U.S. Trade Representative, in terms of some of these prices?

Some may be able to be mitigated somewhat through trade policy.

Mr. MAFFEI. Yes. The truth is that I think we need to do more. I have been in touch with the Office of the USTR when I was a Commissioner, particularly on some of the China issues that we were seeing in the last couple of years in terms of—we have, under other acts, some responsibilities in terms of making sure that there is not discrimination against U.S. trade.

That said, I think it would be very helpful for us to have more contact with them. And I will take your question as an impromptu request on your part for me to get in touch with them and discuss that. So I appreciate the suggestion.

Ms. BROWNLEY. Well, thank you. Thank you for that, and my time is about to run out.

Both of you were talking about your ability to self-initiate. Roughly, can you give me a number, in terms of how many self-initiated claims are underway at this moment in time?

Mr. MAFFEI. I will defer to Commissioner Dye, but I imagine that will be a difficult question for her to give you a specific on.

Ms. DYE. We have quite a few, thank you.

Ms. BROWNLEY. Thank you, Mr. Chairman—

Mr. MAFFEI. Congresswoman Brownley—

Ms. BROWNLEY [continuing]. I yield back.

Mr. MAFFEI [continuing]. We will get back to you, when appropriate, to—

Ms. DYE. Yes, thank you.

Ms. BROWNLEY. Great, thank you. I yield back, Mr. Chairman.

Mr. CARBAJAL. Thank you. We will now move on to Representative Johnson.

Mr. JOHNSON OF SOUTH DAKOTA. Thank you, Mr. Chairman, I appreciate that. My questions will be for Commissioner Dye.

Commissioner Dye, you just mentioned that there are a number of self-referred complaints, or investigations. Have there been any enforcement actions on the actual penalties handed down?

Ms. DYE. No, no, not yet. But this is a new way for us to deal with this particular section of the law. But we were not content to wait any longer for particular complaints. So we use what we have had, and we are using them in—those are—they are violations of the Shipping Act actions, and they are under investigation now.

Mr. JOHNSON OF SOUTH DAKOTA. So what about unreasonable detention and demurrage?

I mean, you guys had——

Ms. DYE. That——

Mr. JOHNSON OF SOUTH DAKOTA [continuing]. An interpretive rule. I mean, do they deal more with that, or do they deal with the refusal of foreign-flagged shippers to take American, particularly agricultural, exports to Asia?

Ms. DYE. They deal with the demurrage and detention charges, as the result of the confusion in the marketplace.

Mr. JOHNSON OF SOUTH DAKOTA. So, Commissioner—and just palms up here—I mean, Congressman Garamendi and I have been talking about some potential legislative solutions that we think would give FMC some additional powers, I think, to better respond to this marketplace.

Now, you have said today that you don't think you need additional authority. And so I just want to get my arms around that a bit more. I mean, it seems like the ocean shippers, they don't think you have the authority. I mean, they don't appear to be running scared, they don't appear to be living up to the letter of the law, either in what we hear are relatively widespread refusal to accept American exports, and then also related to the detention and demurrage issue you mentioned.

So when they are not obeying the law, shouldn't that give us cause to believe that they think you don't have the power to hold them accountable?

Ms. DYE. Well, I appreciate that perspective, because we are certainly not happy with the behavior of some of them, but some of them are in compliance, and keep in close touch on the application of the rule. And so we want to make sure that we target the people who are not complying, and make sure they know that we mean it.

So I always am careful when I am interviewing our shippers to say, "Wait a minute, all of them?"

And they will say, "Well, no, not all."

We understand people are furious. I have to say the stories that I have heard about canceling bookings make us furious, too. But these people are longtime colleagues of ours.

Mr. JOHNSON OF SOUTH DAKOTA. So——

Ms. DYE. We are——

Mr. MAFFEI. Congressman, could I ask your indulgence to——

Ms. DYE. We are going——

Mr. MAFFEI [continuing]. Address that, as well?

Mr. JOHNSON OF SOUTH DAKOTA. Oh, yes, Mr. Chairman, go ahead, certainly.

Mr. MAFFEI. Yes. So, one, I think what Commissioner Dye has been saying is we have the authority to enforce the detention and demurrage piece of this.

Ms. DYE. Correct.

Mr. MAFFEI. I think it is another question that we will leave to another congressman, or whatever, if we have the authority to do all these things, particularly the exports, et cetera. So that is a different question.

I do want to, though, quickly say on whether the lines believe this or not, I do think it depends on the line, and sometimes the people within the line. But I will say this. We need to get these cases done, we need to get them through, and the reason is we need to set a credible deterrent. The only way they are really going to believe it—it doesn't matter what we write or what we say, what we clarify—is there needs to be instances where they do it and it ends up not paying on them.

Mr. JOHNSON OF SOUTH DAKOTA. So—

Mr. MAFFEI. So it is very, very important that we do that deterrent.

And one thing you might want to consider is if we were allowed to not just get fines that would go to the U.S. Treasury, but reparations that would actually go back to the aggrieved shipper. That is vague, or not really—I mean, that is confusing. That would be a useful change in the Shipping Act.

Thank you for letting me address it.

Mr. JOHNSON OF SOUTH DAKOTA. Oh, yes, sure. Thank you, Commissioner and thank you, Mr. Chairman.

I would say a few things with the time I have left. Number one, I agree wholeheartedly, we need a credible deterrent. It does seem like there continue to be bad actions and bad actors within this space. And, as we have talked about a fair amount today, it has had a substantial ripple impact throughout the American manufacturing, and particularly agricultural, sectors.

Number two, I take to heart your suggestion, Mr. Chairman, that perhaps some additional authority around this trade equivalency for U.S. exports could be helpful for FMC. And then I also take to heart your suggestion that perhaps Congressman Garamendi and I could also look at some reparation, making whole some of the harm that has been caused, just opposed to penalties.

Thank you very much. That is very helpful. And the congressman and I will absolutely continue to move forward in those areas.

Thank you, Mr. Chairman. I yield back.

Mr. CARBAJAL. Thank you. We will now move on to Representative Garamendi.

Mr. GARAMENDI. Thank you, Mr. Chairman, for the hearing, and for the Commissioners.

And Chairman Maffei, thank you. It is a delight to see you on the screen. I would love to see you in person here, next time out.

We have got a problem, folks. We have got a problem in which the shipping industry is able to discriminate against American exporters, plain and simple. It may be because they can make a heck of a lot more money sending those containers empty, rather than back to the Western Pacific, than allowing them to be here long enough to be loaded up with American exports. It is a serious problem. It has been discussed here by others.

I want to follow up on the issues raised by my colleague, Mr. Johnson of South Dakota. And this goes directly to Mr. Maffei.

Can you please confirm whether the Federal Maritime Commission currently lacks the legal authority and the statutory directive to ensure export opportunities for U.S. exporters, and promote reciprocal trade, foreign commerce, in your regulation under the current Shipping Act?

Mr. MAFFEI. Certainly, the act does not have any provision to give us the tools to provide for reciprocal trade. That doesn't necessarily mean that I think that that is where it should go. That, obviously, does involve other segments of the Government, like the USTR, et cetera.

But I will—let me just say that I am happy to answer that in more detail, either in a smaller meeting or in writing. But I will just say that we don't have the tools to really address any of that—the market issues that involve the exports—that carriers make so much less on exports so they can do other—

Mr. GARAMENDI. Thank you for that confirmation. You do not have the tools presently. Who was it—Adam Smith said the invisible hand of the market, yes, and most people don't read the next chapter, which is there may be the necessity to regulate that market, so that it actually performs, so that there is a balance of power—in this case, a balance of power between the importers, who are able to receive several times more pay for a container moving from the Western Pacific to America than an exporter from the United States.

So, Mr. Johnson has already brought to our attention that he and I are working on a draft piece of legislation that I would expect would give you the power to look at and to provide the necessary regulation, as Adam Smith said, might be necessary under certain circumstances, that there be a proper balance in the free market system.

We would suggest that there are several things—I will put this on the table now—requiring ocean carriers to include statement of compliance with the regulations, prohibiting ocean carriers from declining all cargo bookings for exports. I note that Hapag-Lloyd told the soybean exporters, American soybean exporters, “Sorry, but we are not going to ship, period.” That must not happen in the future. And so we would prohibit that in our draft legislation, and perhaps in the final law that we would hope would become a result of that.

Also requiring the FMC to post publicly on its website all findings of false certifications by ocean carriers and penalties that the FMC might have under the current law, and also establishing ongoing duty responsibilities for the FMC to ensure export opportunities for U.S. exporters, and promote reciprocal trade.

Yes, there ought to be a law. And we are going to work on that, Mr. Johnson and I, together with others on this committee—that what is currently happening to American exporters is not fair. It is not justified, except if you want to be a price gouger, which, apparently, some of these shippers want to be, taking advantage of the Asian exporters who are willing to pay anything to get their products to the United States, and immediately return that container empty so they can do it once again, to the detriment of American exporters. So we are going to proceed with that.

Mr. Maffei, you seem to be amenable to such an action. Would you care to comment? Should we or should we not take steps to carry out Adam Smith's second chapter? Sometimes there needs to be a regulatory balance.

Mr. CARBAJAL. If you could do that briefly, we are running out of time.

Mr. MAFFEI. Let me just say that I certainly want to work with you on that. I think it is important to take on the issue. I think we should discuss the specific provisions to make sure there is minimal unintended consequences as possible.

But I will also say that it isn't—we can't just scapegoat the carriers. I know that they are an easier scapegoat. Some of the so-called price gouging is going on in just a few of these intermediaries who purchase space on the ship, and then resell it for huge premiums to exporters who just need that, or sometimes importers, as well. So there are good eggs and bad eggs in all of these baskets, and certainly it would be good to have more tools for the FMC.

So I look forward to working with you and your colleague, Mr. Johnson, on that.

Mr. GARAMENDI. Thank you. I yield back.

Mr. CARBAJAL. Thank you. We will now move on to Representative Van Drew.

Dr. VAN DREW. Good morning, Mr. Maffei and Ms. Dye. Thank you for coming to testify before this committee on issues that are so critical to the United States: our supply chain security. We have heard about it over and over again, with good reason.

Over the past year, thousands of ships have left American ports, devoid of cargo. These vessels go to China, fill up with steel, clothing, electronics, toys. You name it, they have got it. They come to the west coast of the United States, unload these cheap Chinese products, and then head back to China as quickly as they possibly can. Once again, they leave with absolutely nothing, zero made in America.

This phenomenon is extremely troubling to all of us. This seems symptomatic of a deep and fundamental weakness in our supply chain. That fundamental weakness in our supply chain, and really, the entire global supply chain, is exponentially increasing dependence on China.

Here are some of the statistics on the Chinese market share, focusing just on maritime commerce industry. Over the last year, China's export container volume increased by 20 percent only in 1 year. China produces—this is an unbelievable statistic to me—China produces 96 percent of the world's shipping containers. China controls just about 50 percent of the world's shipbuilding market.

These trends, combined with the current state of the American maritime industry, present not only an economic threat, but a national security threat. As evidenced in World War II, a nation's industrial power can quickly be shifted to military production. This is particularly true of shipbuilding.

In the event of a conflict with China in Taiwan or in the South China Sea, the United States needs a strong industrial base independent of Chinese supply chains. I can hope, only hope, that you can explain to me how this has all happened, what it means for our country and the world, and whether we are prepared for the worst.

So my first question would be how has China established such dominance of the shipbuilding and container shipping industries?

Mr. MAFFEI. I think you mean container building industries.

Dr. VAN DREW. Correct.

Mr. MAFFEI. I mean, that is pretty much outside of—

Dr. VAN DREW. Well, actually, both.

Mr. MAFFEI. Yes, exactly, both. The—in terms of the manufacturing, it is for the same reasons that China is manufacturing so many other things, because you can manufacture stuff anywhere and, actually, for years, ship it for very, very low cost. Even now, with these huge costs for importing, you are still talking about the ocean shipping cost costing about, say, 60 cents for a pair of shoes.

Now, 2 years ago it was 15 cents for a pair of shoes. Now it is 60 cents. But that very inexpensive shipping cost has allowed China to gain advantages from low labor, low materials cost, low regulations, and almost no regulations in some areas. So that is beyond our purview, but it is one of the reasons why China has gained that.

I will tell you, Congressman, that one of the silver linings to the very dark cloud of all of these record-high freight rates is, with rates—particularly, sometimes, going to, say, \$10,000 a container, in some cases, to go from Shanghai to L.A.—the silver lining is I have heard that there are some consumer goods and large shippers that are now contemplating manufacturing at least some of those products in America again.

So part of the reason, frankly—you asked why this happened. It is actually the low shipping rates for all those years that has allowed it to happen.

China isn't exactly dominant because—I mean, for instance, carriers based in Switzerland and Denmark, each one of those has more of the market share worldwide than China's carrier does.

Dr. VAN DREW. Not to interrupt you—

Mr. MAFFEI. Yes.

Dr. VAN DREW. Thank you. Thank you for your answer so far.

Dr. VAN DREW. Yes.

Dr. VAN DREW. But why, with even containers, I mean, 96 percent of the world's shipping containers?

And I know you say it is beyond our purview, but I think it has to be under our purview in some way, because we place regulations upon ourselves of all types, but we exempt China. We place regulations on ourselves that reduce our productivity, but we don't do that to China. We place regulations on ourselves that really hurt our economy in many ways, and yet we don't do that to Russia or many other countries.

So I, quite frankly, don't understand that, and I know I am going to deviate a little, but we can't build a pipeline, but Russia can. I don't understand that. I don't understand why we have a two-tiered system here. One is they can do anything and we can do nothing. And I know that is not all your fault, but it is under our purview in a sense, because it concerns us, and it concerns us into the future, quite frankly, for the future of the Nation.

Mr. MAFFEI. Yes, sorry. I am not implying that it is not under your purview, or the purview of the country or the Congress. It is simply not in the FMC set of responsibilities that you have given us. It goes more to trade, trading policy, et cetera.

So—but I will tell you this. I am certainly concerned about China's dominance in building in these areas, and it does affect the industry, and we do monitor that.

Dr. VAN DREW. In what ways might China leverage its growing influence in our maritime commerce—

Mr. CARBAJAL. Mr. Van Drew, you are out of time. If you could just finish your question—

Dr. VAN DREW. I am sorry—

Mr. CARBAJAL [continuing]. So he could submit an answer for the record.

Dr. VAN DREW. I could talk about this forever. It is a really huge, dominant problem that we cannot ignore. It is under our purview. And I thank you, Chairman, for your latitude, and I yield back.

Mr. CARBAJAL. Thank you. With that we will move on to Representative Larsen.

Mr. LARSEN. Thank you, Mr. Chairman. And it is good to see the Chairman of the FMC, as well, a former colleague. I appreciate seeing you, as well as Commissioner Dye. Good to see both of you.

I have a little bit different twist on this question. First off, the comments from Mr. Johnson and Mr. Garamendi are right up the alley with what I am hearing in my district. And the first question I have—and you may have covered this earlier, I apologize for being late—does this problem tend to be focused in the natural resources industry, or is this going to manufactured goods, as well?

People I hear from in my district, it is mainly lumber that is getting, you know, kicked out of containers. So what is the record from the FMC on this?

Mr. MAFFEI. Yes, I will—if you are looking for actual statistics, we will have to get back to you. But it is mostly, yes, agricultural-type goods, the kind of goods that are very heavy, and are sometimes more difficult to get to the ports because you have to transport them. Certainly, lumber is in that category. Manufactured goods, obviously, there are far, far fewer of those being exported from the United States, but we have not—at least I have not heard, anecdotally, many complaints from those folks. The higher paid exports, the higher value exports do still have to pay a lot more for a container, but those are the ones that actually are going.

As I mentioned, exports, overall, are up. They are just not up compared to how much the imports are up. And they do—they are also—they are up, but it does tend to be those higher value exports that are getting those containers, because they are the ones that can pay the highest premium, as opposed to, unfortunately, some of these agricultural exporters, who just have very low margins. I mean, that is the sad thing about American agriculture.

Mr. LARSEN. Yes, and I am also trying to piece some of this together, because I am getting complaints in my district from a couple of different areas, where containerships are using federally recognized anchorages in order to anchor until they get a spot at the Port of Seattle, or even the Port of Vancouver in BC. And so we are getting complaints, because these containerships are showing up in places they have never showed up before.

And I was wondering about whether or not the FMC can take a stricter approach to existing contracts or contractors between ex-

porters and shippers in order—would that help solve this supply chain problem? Would that help move containerships faster, in order to get them out of these places where they have been using federally recognized anchorages, in order to alleviate that problem?

Mr. MAFFEI. Yes, you are a bit out of my lane, Congressman Larsen, in terms of the anchorages and how they are used. That is more of a Coast Guard or, potentially—

Mr. LARSEN. Yes.

Mr. MAFFEI [continuing]. Maritime Administration.

But in terms of your question about contracts, I will admit it is hard to draw a direct A and B and say, “Well, if we had more authority over maritime contracts, it would lead to fewer ship lines.”

But I will say that, as I have mentioned, some clarification of the FMC’s ability to review contracts and take steps if we feel those contracts are not reasonable, or have provisions that aren’t reasonable, would be helpful. As I say, now the current law says that contract disputes have to go to a different venue. It was well meaning, and I certainly understand that, we don’t want to become a contract court here. That would lead to volumes that just don’t make any sense of cases.

But that said, though, we need to have some additional flexibility, I think, to look at those contracts, and to take action when they are violative of the Shipping Act.

Mr. LARSEN. All right, that is fine. I was just looking for solutions in a very tight supply chain—

Mr. MAFFEI. Yes.

Mr. LARSEN [continuing]. Environment right now.

Mr. MAFFEI. Yes.

Mr. LARSEN. So I appreciate that.

Mr. MAFFEI. The best thing we can do is, frankly, to continue to try to increase the capacity, so there just aren’t those ship lines.

I mean, nobody wins in those ship lines. Everybody loses.

Mr. LARSEN. Yes.

Mr. MAFFEI. The shippers lose, the ports lose, the carriers lose. They don’t want their ships idle, either. So that is the main thing.

Mr. LARSEN. And we get the phone calls.

Mr. MAFFEI. Yes.

Mr. LARSEN. As you are aware.

Mr. MAFFEI. Yes, I have heard them.

[Laughter.]

Mr. LARSEN. Right, OK. That is it for me.

Thank you, Mr. Chair, I yield back.

Mr. CARBAJAL. Thank you. We will go to Representative LaMalfa next.

Mr. LAMALFA. Well, thank you, Mr. Chairman. I appreciate being able to sit in on the committee today, on this extremely important topic towards [inaudible] I think, especially for California and California agriculture. I am pleased we could have this opportunity to talk about this container situation. It is really crippling a lot of our ability to export.

So, you know, there has been a lot of good conversation already in committee here. But one area I wanted to underline a little bit, too is on—it really affects everybody across the board, whether it is agriculture, getting their products actually through the port sys-

tem into the hands of the people that are supposed to be purchasing it, especially under our trade deals we have with China. And those trade deals don't really seem to be being held up, not meeting the mark. So that has the effect on the producer.

But let's talk about the truckers for a moment. They are really caught in the middle on this, as well. If they cannot get their cargo that they brought in loaded and off their back, then they start running into fees, based on waiting in line at the port for a long time. The trucker, the driver themselves, has the challenge of hours—their hours are curtailed, because they are on duty. So they are running into fees and fines because of that situation.

And then, if they don't get to unload at the port, then they got to wait somewhere with all that. So this certainly does have a ripple effect through a lot of people in the field, in the trucking, as well as what we have with the port.

But let me move to something more specific on the issue. Let me ask Commissioner Dye—thank you for being here.

Ms. DYE. Thank you.

Mr. LAMALFA. Our markets are pretty open to foreign imports, but we don't seem to have the same level of enforcement, or the goodwill, I guess, to require them to take our goods back with them in the turnaround at the ports. As I was mentioning on the trade deals we have, they don't seem to be honoring them.

When you have a situation where—the statistics I have—if a container comes from Shanghai to L.A., the exporter of Chinese or Asian products is paying nearly \$6,000 for the use of that container on that ship. And my figures are the container returning from L.A. to Shanghai, the price for that container is just under \$800, so a difference between \$6,000 and \$800. So we are caught at a disadvantage. The incentive isn't to fill the container in our port with our stuff, but to just get it back to China and other Asian areas as fast as possible. That is, obviously, what we are talking about, what we are battling here. So we suffer here. Our ag suffers, our products that are made in America suffer.

So if we can't require them to take our items back on export, then what is the best way to stop this unfair situation, Commissioner Dye? Can we hit them with fees and fines on that, are there other ways to penalize this problem?

Again, I don't think they are upholding the spirit or maybe the technical efforts of our trade agreements by doing it this way. And our people are left holding the bag. Is it just a matter of the American consumer, that they need to somehow be educated on buying less imports, and somehow more domestically produced products? It seemed like that was a pretty strong emphasis until recently. What do you think on that?

Ms. DYE. Well, I appreciate that. I think that some of our ocean carriers carry a lot of exports, it is their business model, and some don't. And of course, that can change, depending on prices. I agree with you that some of these prices are incredible. As the chairman said, these spot rates are outline.

Mr. LAMALFA. Yes, correct.

Ms. DYE. And our exporters suffer from that. And this problem with container—

Mr. LAMALFA. Real quickly, can we put our finger on the scale somehow in order to tilt that back in our favor a bit?

Ms. DYE. That is probably beyond the Shipping Act itself, as a policy issue, but, as the Chairman said, we will be glad to talk to you and look at anything that you may like us to consider.

We are looking at going back to container depots to—there is a new collapsible container that many say will be to the advantage of exporters, because they can carry more. And so, in 2010 I was looking at load boards in trucking stops to see if we could use that technology. But we have several things we are going to look at, because we agree with you about the problem.

Mr. LAMALFA. Well, thank you, Commissioner, I would appreciate the chance to follow up with you on that.

Ms. DYE. Thank you.

Mr. LAMALFA. I like that, I like those thoughts. Thank you.

Ms. DYE. Thank you very much.

Mr. LAMALFA. Thank you, Chairman.

Mr. CARBAJAL. Thank you. Are there any further questions from members of the subcommittee for this panel?

Representative Gibbs?

Mr. GIBBS. Yes, yes. Thank you.

Commissioner Dye, I have a followup, I think, on Mr. Larsen's question about your data transparency initiative. Would that help on the dwell time for vessels?

It seems to me, vessels waiting at anchorage and for logistical challenges, if we made that so they would know what is going to happen, your transparency initiative, could you just reflect quickly how—

Ms. DYE. Yes.

Mr. GIBBS [continuing]. That might be helpful?

Ms. DYE. Yes, Mr. Gibbs. You are exactly right. The end-to-end supply chain visibility that we considered in 2016 and 2017, after the L.A. transportation congestion in 2016 and 2017, it is a great idea. We are dedicated to it. Los Angeles has done a lot of work on that, and we talked to a lot of experts who believe that, if you tell people what they need to know, when they need to know it, then they behave rationally. And a lot of these lines and bottlenecks can go away.

So thank you for that question.

Mr. GIBBS. Thank you. Thank you. I yield back.

Mr. MAFFEI. Congressman, could I actually—could you—could he indulge me, just to address the same question?

Mr. CARBAJAL. Sure.

Mr. MAFFEI. I actually want to echo it, because I think that this is absolutely key of the—yes, physical infrastructure is important. But this—informational infrastructure is what I call it—is maybe the solution to avoid this happening again, at least as bad, if we ever do have this kind of surge in imports. The national port information system would provide end-to-end visibility, and this better data management system, the more information-sharing, would be absolutely essential to shippers being able to get their stuff to the port at the right time if they are exporters, to pick it up at the right time.

Congressman LaMalfa mentioned how truckers are just getting caught in the middle. That is so true. And a lot of that is because they don't have information soon enough in order to plan when they are going to drop things off, or they are not allowed to drop things off and pick them up at the same time.

So I just want to echo this, in terms of your thinking. It, obviously, won't be done overnight, so it doesn't necessarily help an exporter right now. But this is key to improving and increasing the supply part of the supply and demand equation.

Thank you.

Mr. CARBAJAL. Thank you. Seeing no further questions, I would like to thank our first panel of witnesses for their testimony.

Your contribution to today's discussion has been very informative and helpful.

As there are no further questions, I will now call up panel 2. I ask the witnesses on the panel 2 to please turn their camera on, and keep them on for the duration of the panel.

I would now like to welcome our next panel of witnesses.

First we have Mr. John Butler, president and chief executive officer for the World Shipping Council.

Two, we have Ms. Alexis Jacobson, international account manager for BOSSCO Trading LLC, on behalf of the U.S. Forage Export Council.

Then we have Mr. Frank Ponce De Leon, coast committeeman for the International Longshore and Warehouse Union.

Four, we have Mr. Eugene D. Seroka, executive director for the Port of Los Angeles.

And last we have Ms. Jen Sorenson, president of the National Pork Producers Council.

Thank you for being here today, and I look forward to your testimony.

Without objection, our witnesses' full statements will be included in the record.

Since your written testimony has been made part of the record, the subcommittee requests that you limit your oral testimony to 5 minutes.

With that, Mr. Butler, you may proceed.

TESTIMONY OF JOHN W. BUTLER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, WORLD SHIPPING COUNCIL; ALEXIS JACOBSON, INTERNATIONAL ACCOUNTS MANAGER, BOSSCO TRADING LLC, ON BEHALF OF THE U.S. FORAGE EXPORT COUNCIL, NATIONAL HAY ASSOCIATION, AND AGRICULTURE TRANSPORTATION COALITION; FRANK PONCE DE LEON, COAST COMMITTEEMAN, COAST LONGSHORE DIVISION, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION; EUGENE D. SEROKA, EXECUTIVE DIRECTOR, PORT OF LOS ANGELES, CALIFORNIA; AND JEN SORENSON, PRESIDENT, NATIONAL PORK PRODUCERS COUNCIL

Mr. BUTLER. Thank you, Chairman Carbajal, Ranking Member Gibbs, and thanks also to the full committee chairman Mr. DeFazio and Ranking Member Graves, and, of course, members of the subcommittee. I very much appreciate the invitation to testify today.

The record-setting containerized import levels that we have seen over the past year have taxed every link in the global supply chain, and I would just like to touch on a few of the—

Mr. CARBAJAL. Mr. Butler, could you put your microphone closer to your mouth, because we can't hear you.

Mr. BUTLER. Certainly. Is that any better?

Mr. CARBAJAL. That is better.

Mr. BUTLER. OK. First question: How did we get here?

The title of this hearing really contains the answer, and that is increased demand. Starting in the summer and fall of 2020, and continuing today, Americans with disposable income shifted their spending away from services like restaurants and travel to the purchase of all sorts of goods. And that is from electronics to furniture, and other goods to create home offices and to remodel homes. Most of those goods came to the United States on containerships.

In 2020 the international containerized supply chain essentially moved a year's worth of cargo in 6 months, and demand remains at record levels today. Ports throughout the world are congested, including here, with ships backed up in anchorages, waiting for berths so that they can offload and onload cargo.

Inland transportation by truck and rail is also overwhelmed, and cargo is sitting in containers at warehouses, waiting to be unloaded, and the empty equipment returned so that another shipper can use it. Every part of the supply chain is affected.

Second, what have ocean carriers done to respond to this?

Ocean carriers have responded by deploying every available ship. As we speak, 99 percent of the global container fleet is in service. The only ships not at sea are either between charter contracts or in shipyards. Ocean carriers have also bought or leased and deployed every available shipping container.

Third, I want to address agricultural exports. There is tremendous interest in this, and ocean carriers fully recognize that individual U.S. agricultural exporters have had difficulty getting equipment.

Unfortunately, this is also true for almost every type of shipper in almost every country, and U.S. agricultural exporters are not being singled out. Ocean carriers are working with their customers to make sure that contractual obligations are met. And again, not to minimize individual problems, but U.S. Government data show that agricultural exports are up from pre-COVID levels.

In addition, it is important to note that less than 15 percent of all agricultural exports move in containers. Most seaborne ag exports move in bulk ships. The point is not that we don't have problems to address—we absolutely do—but simply to say that we need to understand the context in which those problems arise, so that we can respond appropriately.

Fourth and finally, there have been some legislative ideas floated by various organizations in recent days. Some of those proposals, frankly, would add paperwork and do nothing else. And some would invite the FMC to micromanage the international transportation system. Neither approach would make things better.

We have heard some proposals from Members today, and I look forward to the opportunity to talk further with you about those proposals.

We do agree that the best solution, really, is through supply chain partners working together on a commercial basis. And when that is not enough, as you have heard a lot about today, the FMC has ample authority to address any unreasonable behavior. And I can say, sitting where I do, that the Commission has made it very clear that it will exercise that power.

One thing we have to keep in mind is that the markets will moderate, as demand and consumption patterns return to normal. In the interim, I can commit to you that the ocean carriers that transport this country's international commerce will do everything in our power to continue to move the historic volumes of cargo that we are moving today.

I look forward to your questions.

[Mr. Butler's prepared statement follows:]

Prepared Statement of John W. Butler, President and Chief Executive Officer, World Shipping Council

1. INTRODUCTION: THE WORLD SHIPPING COUNCIL AND THE LINER SHIPPING INDUSTRY

Chairman Carbajal, Ranking Member Gibbs, and Members of the Subcommittee, thank you for the invitation to testify today. My name is John Butler. I am President and CEO of the World Shipping Council¹ ("WSC" or the "Council"). WSC is a non-profit trade association whose goal is to provide a coordinated voice for the liner shipping industry in its work with policymakers, the public, and other industry groups with an interest in international transportation.

WSC members comprise an industry that has invested hundreds of billions of dollars in the vessels, equipment, and marine terminals that are in worldwide operation today. Approximately 1,200 ocean-going liner vessels, mostly containerships, make more than 28,000 calls at ports in the United States during a given year—almost 80 vessel calls a day. This industry provides American importers and exporters with door-to-door delivery service for almost any commodity to and from roughly 190 countries. Approximately 35 million TEU² of containerized cargo are currently imported into or exported from the United States each year. The container shipping industry is one of the most important facilitators of the nation's growth and ongoing economic activity. Ocean shipping is also—by far—the most fuel-efficient form of transportation on the planet.

The World Shipping Council (WSC) and its members are fully aware of and working hard to help resolve the disruptions to the U.S. international ocean transportation system that have been caused by a confluence of consumer demand and disruption. *Simply put, and as further described below, we do not have a container supply problem, we have a container movement problem.*

2. RECORD CONSUMER DEMAND HAS PRESSURIZED EVERY LINK IN THE SUPPLY CHAIN

The U.S. is experiencing unprecedented import cargo demand due to pandemic-altered consumer spending patterns. U.S. consumers made a dramatic shift from services to goods, resulting in a stay-at-home surge of ordering imported electronics, furniture and other home office and household items. This surge was paid for using disposable income that would normally have been spent on travel and restaurants and was subsequently spurred on by U.S. government economic stimulus measures. Most recently, the surge is being accelerated by vaccinated U.S. consumers and businesses rapidly emerging from COVID-19 and eager to get back to normal, to include fulfilling backorders and restocking inventory. This much-welcomed economic recovery is resulting in record import volumes and is putting pressure not

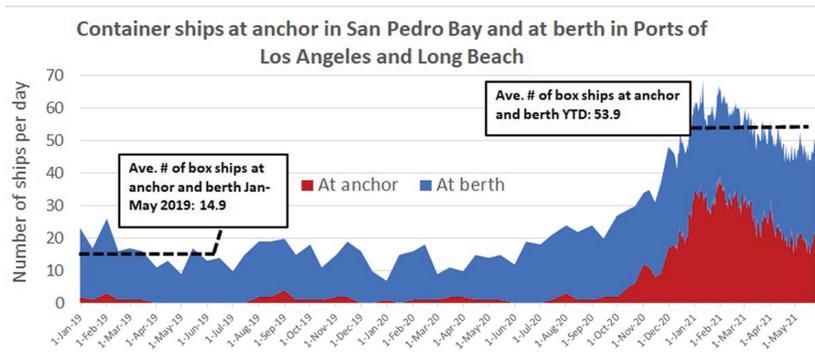
¹A complete list of WSC members and more information about the Council can be found at www.worldshipping.org.

²A TEU is a twenty-foot equivalent unit. Many containers are 40 feet in length and equal 2 TEUs

just on ocean carriers, but on *every link in the complex global and North American supply chain*.

Ports are congested, causing ocean liners to back up at anchor and drift offshore, wreaking havoc on their precisely planned routes and berth arrival times. It is important to note that vessel delays caused by port congestion are not attributable just to waiting times at U.S. ports. There are COVID-19 and congestion delays at ports in other parts of the world as well, and the location of the port delay is largely immaterial to the overall impact on vessel schedules. Most recently, for example, delays are being reported in south China ports such as Yantian because of COVID-19 work restrictions. This has a major impact on the Transpacific trade, thus affecting the U.S.

Vessels arriving off Los Angeles, Long Beach and Oakland are experiencing wait times to berth and offload cargo averaging one to two weeks or more. The graph below illustrates how these wait times have been driven by the current import surge.³ From January through May 2019, the number of ships at berth or waiting to come into Los Angeles/Long Beach averaged 14.9 ships per day. In comparison, from January 1 through May 25, 2021, the average rose to 53.9 ships per day.



Labor has at times been at reduced capacity when COVID-19 protocols have limited the number of longshoremen permitted to work each vessel. Railcars are in short supply due to a lack of chassis required to offload containers from rail to trucks at intermodal rail hubs including Dallas, Chicago, Memphis, and Kansas City. Truck chassis and truck drivers are also in short supply and major trucking companies report that the average dwell time (the time that customers hold equipment before emptying that equipment and returning it) is up 30% year-over-year in May.⁴

The bottom line is that congestion exists at each of these intermodal links in the supply chain. Container shortages—the subject of this hearing—are being caused by the fact that thousands and thousands of containers are stuck aboard ships at anchor, on port terminals waiting to be picked up, on railcars and trucks, waiting to be unloaded, and at inland warehouses and distribution centers that cannot process cargo fast enough to empty containers and put them back in circulation. Therefore, it is taking much longer to move cargo, and until the cargo moves, the equipment it sits upon is idled and cannot be used to move additional cargo. The problem is not so much that there are not enough containers, but rather that containers are not moving through the supply chain as they should. This situation of course frustrates ocean carriers, and all other participants in the supply chain, who are in the business of serving their customers by efficiently transporting and timely delivering the goods those customers have ordered or sold.

3. OCEAN CARRIERS ARE TAKING EVERY AVAILABLE ACTION WITHIN THEIR CONTROL TO INCREASE CAPACITY AND MAXIMIZE EFFICIENCY

Ocean carriers are dealing with these highly unusual conditions by engaging all available equipment and vessels to move this massive amount of cargo and partnering with shipper customers and intermodal facilities and transportation providers to work through the challenges posed by the cargo surge. As cargo volumes

³Source: American Shipper, Wed. May, 26, 2021.

⁴https://www.joc.com/trucking-logistics/trucking-equipment/truckers-hike-fees-crack-down-excessive-dwell-trailers-containers_20210607.html

rebounded since mid-2020, ocean carriers mitigated network stress by deploying all available vessels and working with marine terminals and logistics providers to increase capacity and equipment as quickly as possible to meet demand. Alphaliner, which monitors the global liner vessel fleet, reported in April that the number of idle container vessels amounted to less than 1% (0.8) of global fleet capacity, and most of those ships were under repair.⁵

As inland transportation, marine terminal, and warehousing operations have been hit by volume overloads, the positioning, use and return of containers within the global supply chain has slowed. Carriers and other supply chain participants are working to improve access to container equipment through the repositioning of empty containers along with the purchasing, leasing, repairing, and dispatching of all available containers. Carriers are also encouraging their customers to promptly remove their goods from containers after delivery so that those containers can be used to carry other waiting cargo. Because the volume surge has affected every part of the supply chain, however, there is no single set of actors—ocean carriers, rail carriers, truckers, marine terminals, or cargo owner warehouses and distribution centers—that can clear the bottlenecks single-handedly. The congestion has occurred because all parts of the system are overwhelmed, and the congestion will clear when all parts of the chain return to normal.

As a measure of the magnitude of the U.S. import cargo surge and impact of these combined bottlenecks that prevent the free flow of cargo, industry analyst Sea-Intelligence published two articles on June 6, 2021, that are relevant. The first article analyzed global import growth and U.S. import growth year-over-year comparing 2019 (pre-COVID) to 2021.⁶ The result of that analysis was that the United States' import growth far outstripped global import growth (which on average was modest). The growth in U.S. imports averaged out to ten percent per year over the course of the two-year period examined, but most of that twenty percent total growth has occurred just since the middle of 2020. *In other words, the epicenter of the import cargo surge and import/export imbalance is the United States.*

The other relevant finding from the June 6, 2021, Sea-Intelligence analysis is that approximately 20% of the capacity deployed on Transpacific January–April 2021 has been soaked up by vessel delays.⁷ That compares to 2–4% of capacity being lost to schedule delays in normal times. Just as the “container shortage” is not primarily about the number of containers (but rather the fact that containers are not moving freely), there is not a problem of a lack of ocean vessels, but rather a systemic inability of the entire supply chain to absorb the volumes of cargo that U.S. businesses and consumers are buying. When vessels cannot unload import cargo, load export cargo, and maintain their schedules because they are waiting for a berth, the practical effect is the same as if those vessels did not exist at all. The same as idled trucks and trains on land, ocean vessels are not productive when they are sitting still. As it has been said, “A ship in harbor is safe, but that is not what ships are built for.”

4. U.S. AGRICULTURAL EXPORTS HAVE INCREASED TO RECORD LEVELS; EXPORTS ARE NOT BEING ARBITRARILY REJECTED BY OCEAN CARRIERS.

All shippers, both importers and exporters, have been affected by the bottlenecks that have been caused by this import-induced supply chain congestion. There have been allegations that exporters of agricultural products have been disproportionately affected. U.S. government data does not support such claims; rather, despite the challenges in the supply chain, U.S. agricultural exports are at record levels. The U.S. Department of Agriculture just reported U.S. agricultural exports in fiscal year 2021 are projected at \$164.0 billion, up \$7.0 billion from the February forecast.⁸ Six months into the fiscal year, U.S. shipments of soybeans, corn, tree nuts, beef, wheat and chicken have remained at record levels, while total U.S. exports to China reached \$22.2 billion, 179 percent higher than the same period last year, and are forecast to rise to \$35 billion. U.S. grain and feed exports are forecast at a record \$41.2 billion, up \$3.4 billion from the February forecast. Soybean exports are projected up \$1.5 billion to \$28.9 billion, with volumes at record levels due to strong demand from China. Corn exports are forecast \$3.2 billion higher to \$17.2 billion.

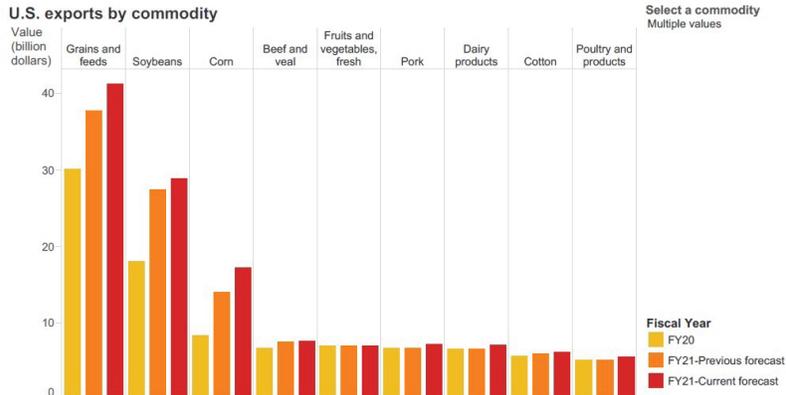
⁵ Alphaliner Weekly Newsletter 2021 Issue 16

⁶ Sea-Intelligence Sunday Spotlight, Issue 517, June 6, 2021; “There is No Global Demand Boom—There is an American Boom”, available at www.sea-intelligence.com

⁷ Sea-Intelligence Sunday Spotlight, Issue 517, June 6, 2021; “Removal of all ULCVs from the Market”, available at www.sea-intelligence.com

⁸ U.S. Department of Agriculture Outlook for Agricultural Trade: May 2021, available at www.fas.usda.gov/data/quarterly-agricultural-export-forecast.

Pork exports are forecast up \$400 million; beef, veal and poultry are projected up \$200 million. Cotton exports are forecast up \$200 million.



Note: Fiscal year (FY) covers October 1 of the previous calendar year to September 30 of the listed year. Values for some commodities are included in more than one figure (e.g., if both categories are selected, Fruits, fresh appears as a separate category and is also included in Horticultural products). To see how commodities are grouped, please refer to Table 3 of the Outlook for U.S. Agricultural Trade.

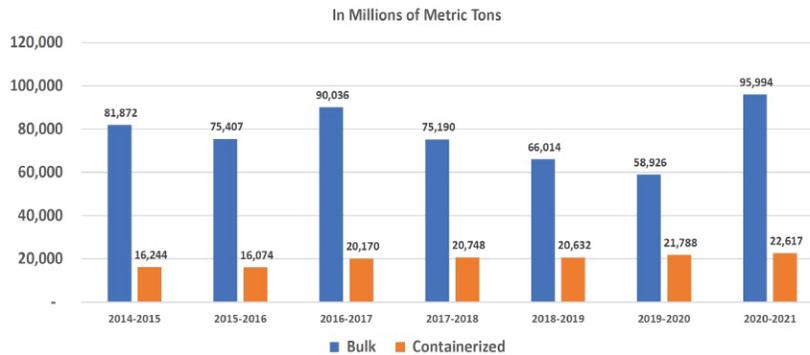
Trade forecasts for the fiscal year are released quarterly. FY21-Previous forecast was released in February 2021, and FY21-Current forecast was released in May 2021.

USDA, Economic Research Service and USDA, Foreign Agricultural Service analysis and forecasts using data from U.S. Department of Commerce, Bureau of the Census.

By way of context, containerized cargo is a small percentage of total agricultural exports. Exports to Canada and Mexico move almost entirely by land transportation. For agricultural exports moving by sea, the overwhelming majority are exported on bulk freighters.

Seaborne Agricultural Exports October-March Months of Recent Years Bulk vs. Containerized

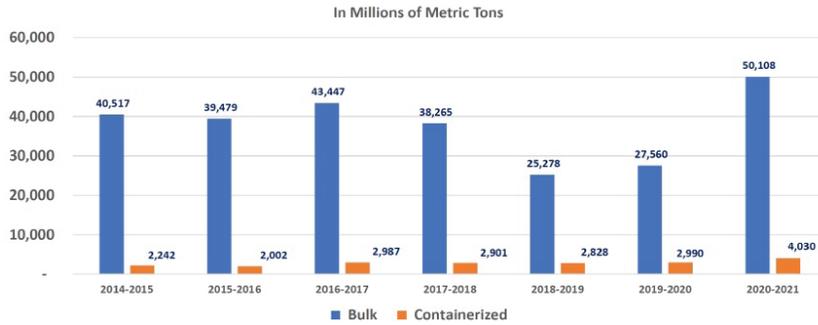
Source: Foreign Trade Division, U.S. Census Bureau



Moreover, there is a huge variation among commodities in terms of what travels in containers, e.g., less than 5% of soybeans, corn (maize), and wheat travel by container.

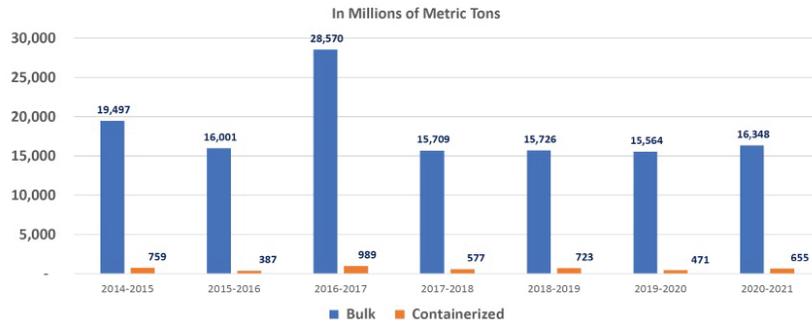
Seaborne Exports of Soybeans Through March in Recent Crop Years, Containerized vs. Bulk Shipments

Source: Foreign Trade Division, U.S. Census Bureau



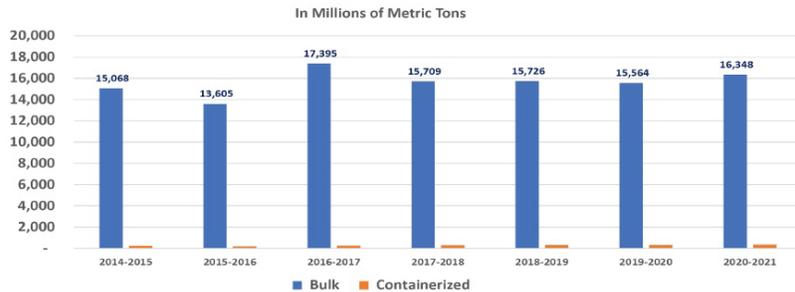
Seaborne Exports of Corn (Maize) Through March in Recent Crop Years, Containerized vs. Bulk Shipments

Source: Foreign Trade Division, U.S. Census Bureau



Seaborne Exports of Wheat and Meslin Through March in Recent Crop Years, Containerized vs. Bulk Shipments

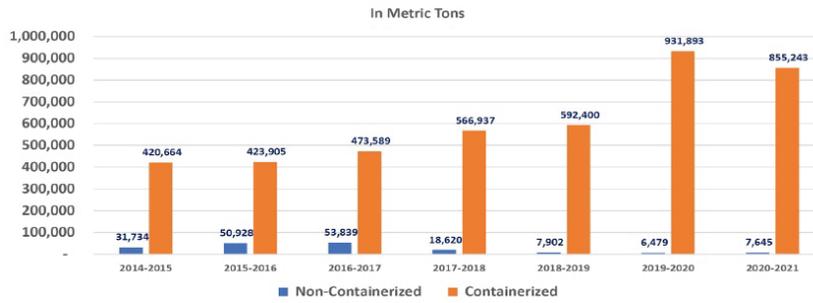
Source: Foreign Trade Division, U.S. Census Bureau



On the other hand, by necessity, exports requiring refrigeration such as pork, beef, and dairy travel almost exclusively by container. Containerized exports of pork and pork products, as well as dairy exports, continue to be higher than pre-COVID levels.

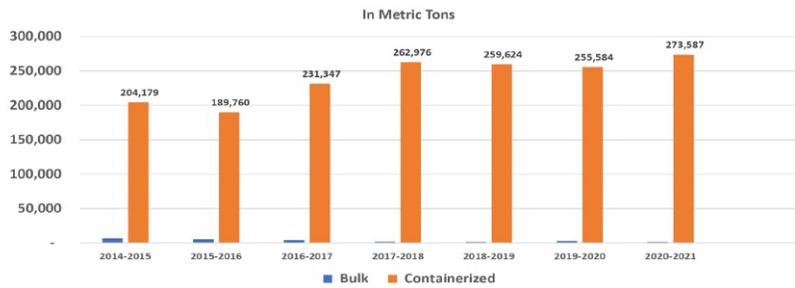
Seaborne Exports of Pork and Pork Products October-March Months in Recent Years Containerized vs. Bulk Shipments

Source: Foreign Trade Division, U.S. Census Bureau



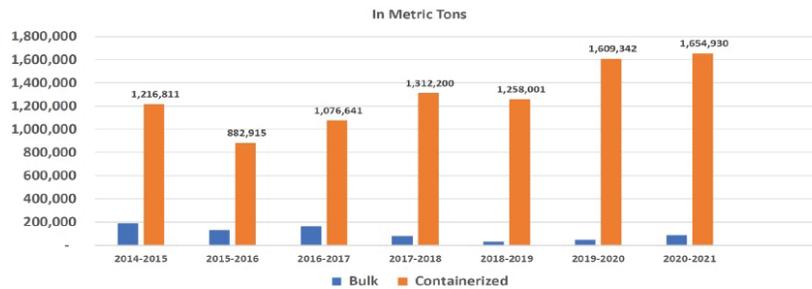
Seaborne Exports of Frozen Beef and Beef Products October-March Months in Recent Years Containerized vs. Bulk Shipments

Source: Foreign Trade Division, U.S. Census Bureau



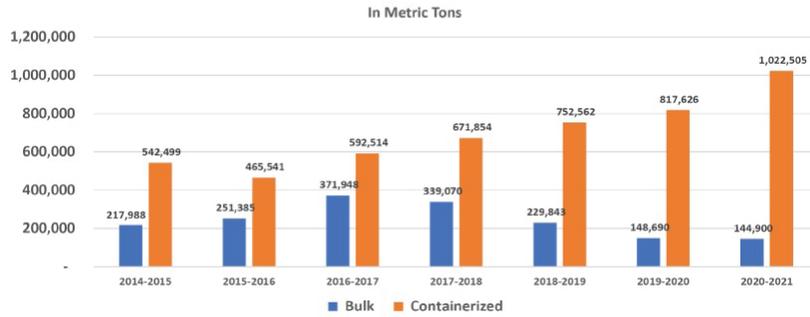
Seaborne Exports of Dairy Products October-March Months in Recent Years Containerized vs. Bulk Shipments

Source: Foreign Trade Division, U.S. Census Bureau



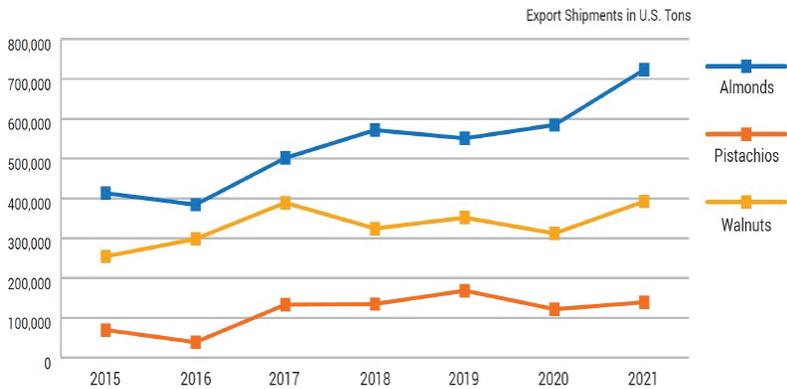
High value Ag commodities such as tree nuts are also shipped via container, and exports remain at high levels.

Seaborne Exports of Tree Nuts
October-March Months in Recent Crop Years
Containerized vs. Bulk Shipments
 Source: Foreign Trade Division, U.S. Census Bureau



The California Almond Board reports that almonds, which are California’s most valuable export, are up almost 24 percent through March over the previous year, and more than 6 percent higher from pre-Covid 2019–2020. California walnuts, which are the State’s fifth most valuable export, are on a record-setting pace to ship 80,000 more tons this year than last year, and pistachios are also exporting at high levels.

Exhibit A California Tree Nuts Exports: Crop Years Through March of Each Year
 Source: Almond Board of California, California Walnuts Board, Administrative Committee for Pistachios



Within the category of agricultural exports that move in containers, there has been an assertion that more containers should be set aside for agricultural exports. Although it is understandable that all shippers would prefer to have a favored position in the market, it is not possible to arbitrarily favor one group of customers without disrupting the functioning of the entire system, to the detriment of all. When overall U.S. import volume surges and overall U.S. export volume remains relatively flat—as has been the case since mid-2020—this results in an increase of empty containers in the U.S. that need to be repositioned to overseas locations to be filled with U.S. import cargo. Without that repositioning of empty containers to the origin countries from which U.S. importers purchase goods, U.S. importers would not be able to meet the demands of U.S. businesses and consumers that purchase those imported products.

The containerized ocean transportation system is not two disconnected import and export systems. Rather, it is one system comprised of a single interconnected network employing the same ships and containers in continuous service loops, and that network must be managed to keep all types of cargo moving. And, while there is

no doubt that agricultural exporters—like all sectors—have been stressed by COVID-19’s impact on the supply chain, *U.S. agricultural exports are not only being transported, but in many cases in record volumes.*

5. THE FEDERAL MARITIME COMMISSION (FMC) HAS THE NECESSARY AUTHORITY AND IS ACTIVELY REGULATING THE U.S. INTERNATIONAL TRANSPORTATION SYSTEM

In challenging trade conditions, it is not uncommon for there to be complaints of unreasonable behavior. If there are problems that run afoul of the Shipping Act, the FMC is there to see that everyone behaves reasonably. The FMC is actively investigating allegations of Shipping Act violations through its “Fact Finding 29, International Ocean Transport Supply Chain Engagement”, in order to identify operational and regulatory solutions to cargo delivery system challenges related to COVID-19.⁹ Just last year, in May 2020, the FMC published its “Interpretive Rule on Demurrage and Detention Under the Shipping Act”¹⁰ providing guidance on how the FMC would assess whether detention and demurrage charges and policies may be unreasonable in certain factual situations.¹¹ The Interpretive Rule followed FMC’s completion of its extensive “Fact Finding 28” investigation into detention and demurrage practices. Detention and demurrage charges are used to ensure that shippers expeditiously pick up their cargo and promptly return empty containers so the equipment can be used by the next customer. This keeps the supply chain moving and enhances service efficiency, reliability and predictability. The Commission has been especially focused on detention and demurrage charges recently, both because these mechanisms are necessary to maintaining the free flow of cargo, and also because cargo volumes and related congestion have raised questions about how charges are applied in some cases.

The FMC’s active engagement and oversight demonstrate that the FMC is uniquely positioned and has ample authority to address these issues. The Commission has repeatedly confirmed that questions about detention and demurrage are inherently fact-specific, and adjudication of any complaints is the sort of task to which administrative agencies, with their adjudicative and investigatory resources, are well suited to handle. To date, there have been very few formal complaints filed with the FMC, and the Commission has the authority to undertake enforcement actions on its own initiative if it finds cause to do so.

6. CONCLUSION

Every sector of the global supply chain remains under tremendous stress, and that stress is more acute in the United States than anywhere else on the globe. That is the case because of the historical surge in U.S. import cargo. The record-level import surge has clogged international ports as well as some of the nation’s ports, the inland transportation system, and warehouses and distribution centers. Those landside back-ups mean that we have ports where ships are waiting for long periods of time to unload and load cargo, thus reducing the effective capacity of the world’s containership fleet. The import surge has also exacerbated an existing imbalance between import and export volumes, which increases the need to reposition empty containers in order to meet the continuing demand from U.S. importers. All of these factors build upon one another to cause the situation that we find ourselves in today.

Everyone experiencing these unprecedented conditions has been impacted by the business challenges, costs and delays resulting from the pandemic and its cargo demand surge. As testimony from all witnesses today will show, this is not a situation caused by the failure of any one part of the supply chain, and no part of the system has been untouched. To the contrary, all parts of the chain are affected, and all parties are working overtime to keep cargo moving. And while there are obviously disruptions, costs, and delays, the fact is that the international ocean and U.S. intermodal transportation system is moving more cargo right now than at any time in history. *The system has bent, but it has not broken.*

The supply chain challenges that we face require logistical and management solutions, as well as a return to a more normal volume and balance of import and export cargo, which will happen over time. Necessary solutions are being provided through the common purpose and efforts of many of the supply chain actors represented here today: ports, labor, carriers and shippers. These are operational and commercial challenges that must be addressed first and foremost by the commercial service pro-

⁹ See www.fmc.gov/fact-finding-29

¹⁰ Federal Maritime Commission, Interpretive Rule on Demurrage and Detention Under the Shipping Act, 85 Fed. Reg. 29638, at 29647 (May 18, 2020).

¹¹ See www.fmc.gov/fact-finding-28

viders and customers involved, with a steady regulatory backstop provided by the Federal Maritime Commission. *The ocean common carrier community is committed to serving the international trade of the United States, and the historical volume of cargo that we continue to move is the evidence of that commitment.*

Mr. CARBAJAL. Thank you, Mr. Butler.

We will next go to Ms. Alexis Jacobson.

Ms. JACOBSON. Chairman Carbajal, Ranking Member Gibbs, and members of the committee, I appreciate the opportunity to discuss these issues facing agriculture exports today. My name is Alexis Jacobson. I am presenting to you from our farm in Tangent, Oregon, specifically outside the hay storage barn, on behalf of the U.S. Forage Export Council, National Hay Association, and Agriculture Transportation Coalition, as well.

Before getting into the specifics, can I give you a quick overview?

You will see in my submitted testimony the daily challenges that our Nation's agriculture exports face today, including these.

First, the lack of ocean carrier commitment to our American exporters. Ocean carriers continue to leave American exports in the dust, as our terminals become overcrowded with loaded import containers, and empty containers are sent back on ocean vessels, rather than loaded with our goods. Vessel commitments are often being canceled close to the last receiving date, leaving exporters and their goods stranded. All too often we are given only 1 day's notice to pick up an empty container and return it to a marine terminal. And frequently, that is impossible.

Particularly for farms like ours, a 4-hour drive each way to Tacoma and Seattle, we need steady vessel schedules, steady earliest receiving dates, and steady final receiving dates in order to return cargo and be successful in shipping our goods.

Second, we understand that the COVID-19 pandemic has exacerbated underlying inefficiencies in our supply chain and led to this current situation. However, ocean carriers should not be profiting from these challenges with huge detention and demurrage charges that the FMC has already said are unreasonable.

And it is so difficult and time-consuming for us, a small—and large, and all the exporters to challenge these charges. We need the FMC to have more power to prevent these invoices in the first place. We are getting nicked and dined and penalized more and more for just trying to ship our goods to our customers. Between increases in ocean freight and increases in trucking costs, our hay becomes less competitive in a global market every day. Australian hay products will soon out-compete our American hay products.

Our truckdrivers are spending more time in the lines at the port, causing them to max out their legal hours of service. The next step is to hire additional drivers, but we are already heading into a driver shortage. Truckers for shippers that are farther from grain terminals already stretched these legal hours of service, as it is, and we are paying more than ever for record-low customer service from the ocean carriers.

One simple fix for us to help marine terminals and truckdrivers be a little bit more efficient would simply be to add 1 or 2 hours of flex time, from 6 a.m. to 8 a.m. at the marine terminal. We support this idea, which we first heard about at an Agriculture Transportation Coalition meeting with a west coast terminal operator.

All of us exporters have been trying really hard to survive a really difficult shipping situation. We have been telling anyone who will listen. I am pretty knowledgeable in shipping hay and seed, but I am not an expert in ocean shipping laws and regulations. That is why I am here today, in hopes that you will write whatever laws need to be written.

We are all glad that the ITC is making proposals to improve this situation. As I said, exactly how the laws are written and would work legally is not my expertise. But we do like the objective: to stop these unfair detention and demurrage charges; to have carriers carry our export cargo, instead of heading back with empty containers; and to increase the help the FMC can provide when we need to resolve a particular matter with a carrier.

I would like to work with you and the FMC to achieve these objectives.

The U.S. exported nearly \$1.4 billion in forage last year, generating jobs in rural communities, where employment is really needed. Competing internationally is tough enough, without the extra burdens imposed by ocean carriers and terminal operators. Through the efforts of companies like ourselves, we offer high-quality forage to overseas dairy farms and cattle ranches. But this means very little if we cannot get our product to our customers.

Thank you all. I am happy to try and answer any questions that you may have.

[Ms. Jacobson's prepared statement follows:]

Prepared Statement of Alexis Jacobson, International Accounts Manager, BOSSCO Trading LLC, on behalf of the U.S. Forage Export Council, National Hay Association, and Agriculture Transportation Coalition

INTRODUCTION:

Thank you Mr. DeFazio for inviting me. I am presenting to you from our farm in Tangent, Oregon, specifically in the hay storage barn. Chairman Carbajal, Ranking Member Gibbs, and members of the committee, I appreciate the opportunity to discuss these issues facing agriculture exporters.

Today, I am representing the nation's hay producers—the largest volume containerized ag export cargo through West Coast ports, and it moves over all other coasts as well. In addition to the National Hay Association and the US Forage Export Council, I am representing all the members of the Agriculture Transportation Coalition—hay, seeds, almonds, beef, soybeans, fresh fruit, cotton, paper, and so on, located in every state. We are all struggling to survive the ocean shipping crisis, to get our product to foreign customers, and it is getting harder every day.

As the AgTC says: “there is nothing we produce in agriculture here in the US, that cannot be sourced elsewhere in the world. If we can't deliver it to our foreign customers, dependably and affordably, they will turn to other countries, and we lose those customers.” That is definitely true for forage. If we cannot meet our customers' demands, they will, and they have, sought out replacing our American forage with Australian forages instead.

The Federal government can help us—please give the FMC teeth to make carriers obey their demurrage and detention rule, make the FMC a resource to help us when dealing with the ocean carriers, and encourage the carriers to carry our export cargo rather than depart with empty containers. Please consider the AgTC's proposals, which I am attaching to my testimony.

Now, I would like to give you a window into what an agriculture exporter is going through now, to get our products to our foreign customers. For true insight into the daily life of an exporter, I will outline each step of the process, from obtaining the commitment from the ocean carrier for our cargo to arrival at final destination. This will include what normal operation looks like, and what current operation status looks like.

OCEAN CARRIER COMMITMENT

Normal Operation:

Similar to when purchasing a plane ticket, exporters ask ocean carriers for a commitment of a certain number of containers on a certain ocean vessel to a particular destination. We refer to these commitments as a "booking" or "bookings," and we utilize contracts with the ocean carriers to make the container space commitment. Our contract states the ocean freight price to get a container from a Port of Loading or Port of Receiving to the Port of Discharge. Sometimes the Port of Receiving is different than the Port of Loading if your booking originates out of a container yard that will utilize the rail or a truck to get the container from one loading point to the final port of loading. For example, Port of Portland has the capacity for receiving export containers to load on the rail to be loaded onto a vessel in Seattle or Tacoma, and they also have the ability to load onto a vessel through their marine terminal.

Delivering our cargo by truck to a marine terminal at the Port of Loading is useful, as it can provide quicker transit from our plant, with less risk; but a rail container yard located closer to our plant allows for more flexibility for those of us further from the Port of Loading. To continue with the air travel example, using a rail terminal is like using a smaller airport to get to a bigger airport for your international flight. From Albany, Oregon, we could fly out of Eugene, Oregon's airport to go to bigger destinations, but it typically means a layover at a larger airport, like Portland, Oregon or Seattle, Washington. Layovers can be risky with plane rides because you may miss the next flight if something goes wrong or the schedule is too tight, and the same goes for containers leaving from a rail terminal to the marine terminal.

In normal operations, exporters are able to negotiate our prices and services depending on our needs and needs of the ocean carrier. We negotiate with the ocean carrier's sales staff. Exporters rely on these negotiations to make the best decision for which carrier to use. When an exporter needs a booking, they can typically find something close to what the exporter and our overseas customer needs, and we only need to do this two to four weeks before the final date cargo can be received, often referred to ask the "cut date" or "cutoff date."

Operations during the Ocean Export Crisis:

During the current Ocean Export Crisis, the American agricultural exporter has little to no negotiating power when it comes to our ocean carrier contracts and relationships. We are forced to be price takers, who are receiving no added benefits to our increased costs. Rates have increased significantly in six short months, as ocean carriers have implemented "General Rate Increases" (GRIs) nearly every month and added new fees and surcharges.

Exporters and freight forwarders must book space commitments on vessels as soon as they "open," otherwise the space is unlikely to be available. Most ocean carriers open vessels 6-8 weeks ahead. However, with the rapidly changing ocean freight prices, what may be the cheapest option today, could be your most expensive option in 6-8 weeks. In addition, ocean vessel on-time performance has been very unpredictable, meaning that the schedule shown in a vessel space commitment confirmation may very well be very incorrect as it approaches. The vessel space commitment does not guarantee that an ocean carrier will have empty containers available. We have to hold onto vessel space commitments as soon as they become available. This means we may not always have the cheapest ocean freight option available, may not have access to vessel space that matches the customer's needs. Most orders end up delayed either due to vessel delay from previous or future calls, vessel delaying berth due to terminal congestion, or transshipment delay when a container is not directly shipped from loading port to destination.

Some ocean carriers limit export customers on how much vessel space they can have either per vessel or per week, and they will not budge on these limits. If a customer needs 7 containers on a vessel, but our allocation is only 5 containers, we will have to either reduce our order or ship 5 containers on one vessel and 2 containers on another vessel, adding extra import fees to the overseas customer.

As much as the vessel space commitment should reserve space on a vessel, we have learned it does not guarantee that the ocean carrier holds the space for an export. There is a chance the ocean carrier could cancel the booking, and we may not find out until one week before containers are supposed to be turned into the marine terminal gate. Sometimes, we receive advance notice; however, sometimes, we don't find out until the trucker has begun to pick up containers for the order.

These days, a carrier's vessel space commitment does not guarantee that all containers will sail on the same vessel. Particularly an issue when shipping to Port of Loading via rail, if an order or some containers in an order do not make it to the

Port of Loading in time, the ocean carrier will delay the order to the next vessel or split the order to the original vessel and the late containers to a new vessel. A split booking is costly to overseas customers, as they will have to pay for extra documentation fees and extra import fees. While split bookings occurred seasonally during normal years, the ocean export crisis has drastically increased their occurrence, as marine terminals are congested with import containers and there are fewer rail services to move containers from the terminals.

TRUCKING & CONTAINERIZATION OF PRODUCT:

Normal Operations:

Within 10–14 days of the last day containers can be turned into the marine terminal, an exporter arranges trucking. It requires verifying information with all three parties—the ocean carrier, the terminal, and the exporter—before arranging a pick-up of an empty container, loading the container with our hay, and returning the container to the marine terminal. Shippers must repeatedly verify this information to check for any vessel delays and ensure final customer approval of the details. A booking must be released for pickup before a trucker can begin to get containers under its confirmation.

Inland rail terminals typically have the most limitations on available empty container equipment for exporters, so it is not unusual that container shortages to happen throughout the year. However, it ebbs and flows with a normal import season. As empty import containers are returned after big shopping holidays, like Christmas, typically more become available.

Once a trucker picks up a container under a vessel commitment booking for an exporter, they will get the container loaded and wait for the approved first day to return the container to the terminal, also known as the earliest return date (ERD). If containers are returned before the ERD, the exporter or trucker can be penalized with costs. These costs are known as demurrage charges, which are imposed if a container is in the terminal longer than the contracted free number of days. In contrast, if a trucker picks up a container too early, they can receive detention charges if the container is not returned to the terminal before detention ‘free days’ expire.

Operations during the Ocean Export Crisis:

Today there is no predictability, continual changes and confusion. Truckers are still verifying information on earliest days to return and final day containers can be returned with the parties as mentioned above; however, these verifications must be made constantly, as the information is constantly changing. It takes much more time to verify this information, and frequently these changes to the return dates happen even after the first day to return containers. This means containers could already be on the terminal dock, waiting to load, when the carrier changes the return date, leading to the exporter receiving demurrage charges.

As export customers are left with minimal vessel space commitment, the ocean carriers also leave them with few empty containers for export. Ocean carriers often send containers back on vessels empty to allow for a quicker turn around for more import cargo back to the United States. They chose to cancel or deny export bookings to favor those empty containers away from the United States. As a result, truck drivers tend to spend much more time in the terminals due to congestion or lack of empty export containers. Truckers then have to charge export customers with wait time charges for the extra time spent in the terminal. These charges add up quickly, with additional truck fees if the driver cannot pick an empty container due to lack of equipment or terminal congestion. With inconsistent vessel arrival schedules, increasing vessel voids, and overall hassle of container shipping, some trucking companies are having to rely on diversification of their business to other trucking opportunities in order to keep truck drivers busy.

Despite complying with the free time limit an exporter has in their contract for holding a container outside the terminal and returning a container to the terminal, export customers and drayage truckers are constantly receiving incorrect invoices from the ocean carriers for detention or demurrage charges. Some exporters have invoices like this to fight daily, and it takes weeks to resolve. Smaller exporters, like ourselves, see these invoices almost weekly. Exporters and truckers are forced to fight or pay these invoices, or there is a chance the customer overseas will not be able to pick up their cargo.

CUSTOMER SATISFACTION:

Despite best efforts to make schedules, the ocean carriers make it very difficult to keep our customers satisfied. As a result of the challenges mentioned above, many exporters are forced to focus on the absolute minimum needs of their cus-

tomers, because that is the only vessel space commitment we can consistently find. It is very difficult to begin any new export business, unless you are able to give up a long-term customer's needs.

Shipments along the West Coast were extremely delayed for anything shipped between December and late February. Many of our shipments during that time arrived to our overseas customers at the same time as some of our March orders, creating huge inventories for them. In the United States, many of our farmers are able to store product in large storage barns. However, in many of the forage destinations, they do not have access for large storage barns. Customers only order what they need because they do not have the warehouse storage space for anything additional.

They had to work through that inventory before ordering more hay. The result was that overseas customers reduced their orders, and we and other hay exporters lost export business. This was all through no fault of our own, and no fault of our customers, but it illustrates how the US exporter is being hurt by the ocean shipping delays and unpredictability.

SOLUTIONS:

1. Amend the Shipping Act to allow for much better Federal Maritime Commission enforcement of the detention and demurrage rules and other "unreasonable" acts.
2. Amend the Shipping Act to encourage ocean carriers to maintain carriage of American exports.
3. Encourage US Terminals to operate additional hours to work through the terminal congestion with ocean carriers paying the additional marine terminal fees associated.

CONCLUSION

There are few steps of the process where ocean carriers have not proposed a challenge for agriculture exporters trying to market American goods, and we need the help of the Federal Government in order to begin the recovery and normalization process. Every day, our exporters and our truckers struggle through these challenges. Our harvest season is quickly approaching. Many exporters are very worried as we begin to harvest our crops soon what challenges the market will begin, especially for those with carryover from the 2020 harvest. We need action soon.

As mentioned in the attached proposal from the Agriculture Transportation Coalition, we need to give the FMC the ability to fight for the American shipper. I encourage you to read through their proposal attached, as well as the additional letters regarding the ocean export crisis that I have included in my testimony. I thank you for your time and look forward to a solution soon.

ATTACHED DOCUMENTS:

1. Updated Legislative Action Package by AgTC
2. AgTC Overview: The Current Export Crisis

ATTACHMENT # 1: UPDATED LEGISLATIVE ACTION PACKAGE BY AGRICULTURE TRANSPORTATION COALITION

PROPOSED LEGISLATION TO ADDRESS OCEAN SHIPPING CRISIS

The on-going ocean shipping crisis has created an unsustainable environment threatening US agriculture and forest products exporters, nationwide. Over 150 Members of Congress have expressed their concern in letters to the Federal Maritime Commission, 70+ national agriculture organizations and over 300 agriculture exporters have sought intervention by the Secretaries of Agriculture and Transportation. Click [here](https://agtrans.org/wp-content/uploads/2021/06/Ocean-Shipping-Crisis-Materials_06_10.pdf) [https://agtrans.org/wp-content/uploads/2021/06/Ocean-Shipping-Crisis-Materials_06_10.pdf] to see these letters and a 2 page overview of the crisis and possible avenues to address it.

The founding principal of the Agriculture Transportation Coalition, dubbed by the Journal of Commerce as "the principal voice of agriculture exporters in US transportation policy", is very much in play today:

"there is nothing in agriculture or forest products that we produce here in the US, that cannot be sourced elsewhere in the world; if we cannot deliver it to our customers affordably and dependably, they will find those other sources. Once we lose a foreign market, it is often not possible to regain it."

Today, ag exporters are often unable to get carriers to accept their cargo, or are being assessed such extra costs (even those declared unreasonable by the FMC) as to make the sale of ag to be uneconomic:

To address this crisis, the AgTC offers two amendments to the Shipping Act, an Appropriations provision, and a joint initiative to increase the hours of operation of marine terminal gates:

Page 2.[†] Amendment to gain *enforcement of FMC's Detention and Demurrage Rule*

Page 3. Amendment to *Prioritize FMC's Service to US Exporters, Importers and Others*

Page 4. Amendment to *Maintain Carriage of US Exports*

Opening the Ports: Responding to ocean carrier executives who have identified the relatively limited hours of operation of US marine terminals, the AgTC is reaching out to key stakeholders—ILWU, terminal operators, port authorities to achieve additional gate hours at West Coast ports. This may require Congressional and/or Executive Branch intervention, but we believe can be achieved without legislation.

Amendment to gain enforcement of FMC's Detention and Demurrage Rule

Explanation: After several years' investigation, the Federal Maritime Commission found that ocean carriers and terminal operators were unfairly issuing penalties (called demurrage—for leaving a container on a marine terminal longer than allowed, and detention—maintaining possession of a container longer than allowed). Following notice and hearings, the Interpretive Rule on Demurrage and Detention Under the Shipping Act [https://www2.fmc.gov/readingroom/docs/19-05/19-05_fnl_rul_fr.pdf/] provided guidance to carriers as to “reasonable” practices, conforming to the Shipping Act.

However, the carriers and terminals have failed to follow that guidance, routinely imposing the demurrage and detention charges (\$175 to \$750/per container per day) cumulatively hundreds of millions of dollars, even greater than the freight charges), often in circumstances where the delay is beyond the control of the shipper (exporter or importer), and thus unreasonable per the FMC Rule. Many shippers are struggling under millions of dollars of such penalty charges.

When the carrier imposes such a charge, the burden falls on the shipper to submit penalty waiver requests to that carrier, explaining why the charge is unreasonable, even though the relevant information (location of the vessel, vessel schedule and notices, cargo cut times, terminal hours, etc.), is the carrier's own operations information. It is extremely burdensome for the shipper to find the data, carriers make submission of complaints difficult, they are frequently rejected by carriers without explanation. Also, while the shipper must pay the charges immediately, carriers can take months to process the requests for waiver, if they do so at all.

The proposed Amendment would require the carriers or terminals to simply confirm, when imposing a detention or demurrage charge, that it complies with the FMC's Rule. Such certification would accompany the charge. There is no requirement that the certification be filed with the Commission. The only certifications the Commission would review would be those a shipper goes to the effort to submit, with Bill of Lading and other information, if it believes that the charge violates the FMC's Rule. The FMC would develop an expedited informal submission process to receive such submissions. Then investigate. If finding the carrier's certification false and in violation of the Rule, Shipping Act penalties would be imposed (in addition to mandating prompt refund of collected charges). The Commission would also have authority to self-initiate investigation of carrier practices in this regard, and apply enforcement measures.

Proposed Amendment:

“The Ocean Shipping Reform Act of 1998, Section 10 Prohibited Acts. Is amended at 46 USC 41104 (a) Common carriers. No common carrier or marine terminal operator, either alone or in conjunction with any other person, directly or indirectly, may—

(14) invoice any party for detention and/or demurrage charges, unless such invoice is accompanied by a certification by the common carrier that such charge complies with all provisions of 46 CFR 545. The charged party shall include such certification in any complaint to the Commission, under an expedited informal process to be developed by the Commission to receive and investigate such submissions. Should the certification be found to be false, and the carrier not in compliance with the provi-

[†] Editor's note: page numbers refer to this attachment as it appears in its original format at <https://docs.house.gov/meetings/PW/PW07/20210615/112764/HHRG-117-PW07-Wstate-JacobsonA-20210615.pdf>

sions of 46 CFR 545, the carrier shall be subject to penalty as set forth in Section 13 (b)(1) of the Act. The Commission is authorized to self-initiate, without receiving a complaint, investigation of carrier practices in this regard, and undertake enforcement as it deems appropriate, including Section 13 (b)(1) penalties.”

Amendment to Prioritize FMC’s Service to US Exporters, Importers and Others

Explanation: International ocean shipping is complex, with numerous transactions and documents, some of which serve to facilitate payment and transfer of ownership of the cargo itself, etc. With ocean carrier finance, operations decisions made at overseas headquarters, and customer service functions for most carriers located overseas, the challenge for exporters is to gain cooperation from the ocean carrier to resolve practical (non-policy) problems, such as, for example, finding or replacing a missing document, etc. (which if not recovered timely, threatens the entire sale of the cargo. Or questioning a charge. For most US exporters, importers, freight forwarders, and truckers, CADRS has been the place at the FMC where they can, informally and affordably, without hiring lawyers, have support in gaining a carrier’s focus and effort to resolve such problems, in a timely manner. Thus CADRS plays an essential, valued role for the US shipping public (exporters, importers, forwarders, truckers, etc.), which would benefit by additional staffing and authority. This amendment will provide such resources and direction.

NOTE: How the funds are appropriated, either as an additional amount above current FMC appropriations, or as a percentage of the total FMC appropriation, is to be determined by the relevant Congressional committees. Following are two options.

Proposed Amendment (for Appropriations for Federal Maritime Commission):

“Office of Consumer Affairs and Dispute Resolution Services (CADRS) shall be provided

\$X in addition to amounts otherwise appropriated to the Federal Maritime Commission

or (two options for Congress to consider)

an allocation of not less than 10% of the total annual appropriation to the Federal Maritime Commission.

The funds are to be dedicated to achieve the following functions of CADRS: to protect and advance the interests of US consumers of ocean transportation services provided by MTO’s and VOCC’s. Such consumers include shippers, OTI’s and truckers, for whom CADRS staff shall provide assistance and solve practical problems. The Chairman of the Commission shall provide Reports, every 6 months beginning 6 months after enactment of this provision, to the Appropriations Committees, describing specifically the assistance provided by CADRS to US shippers, OTI’s and truckers.”

Amendment to Maintain Carriage of US Exports

Explanation: Carriers are too frequently declining to carry US exports, in favor of returning to Asia with empty containers, causing significant lost export sales for US agriculture and forest products producers. Today, a lower percentage of containers returning to Asia are loaded with export cargo, while exporters have more cargo they need to ship. According to carriers, they decline export cargo in order to expedite the return of empty containers back to Asia, to quickly load higher value cargo from factories in Asia for the much more lucrative eastbound voyage back to the US. Thus, too often US agriculture/forest products are left stranded here in the US, unable to be delivered to foreign markets. US agriculture exporters are reporting, on average a loss of 22% of sales. While the ocean carriers are private businesses (as are other regulated industries such as airlines, railroads, etc.), recognizing their essential function for US commerce, they have been regulated, to protect the US shipping public (importers and exporters), since 1916. A purpose of The Ocean Shipping Reform Act of 1998 is set forth in Section 2 (4): “to promote the growth and development of United States exports through competitive and efficient ocean transportation”

Proposed Amendment:

“The Ocean Shipping Reform Act of 1998, Section 10 Prohibited Acts is amended by adding at 46 USC 41104 (a) Common carriers. No common carrier, either alone or in conjunction with any other person, directly or indirectly, may—unreasonably decline export cargo bookings if such cargo can be safely and timely loaded and carried on vessels scheduled for that cargo’s destination. Violation of this provision shall be subject to penalty as set forth in Section 13 (b)(1) of the Act.”

ATTACHMENT # 2: AGRICULTURE TRANSPORTATION COALITION OVERVIEW: THE CURRENT EXPORT CRISIS

Twenty-five years ago, 20+ ocean carriers carried containerized US imports and exports. Today, that number is down to 10, in some key trade routes for export cargoes (refrigerated, etc.) only one carrier serves that route. US exporters do not have many choices, they are completely dependent on these carriers to deliver our ag and forest products to overseas customers. Currently, these carriers are frequently declining to carry US export cargo, and when they do, they continue to impose very large additional charges, even though deemed unreasonable by the Federal Maritime Commission.

Since last summer, import cargo has been flooding into the US, in unprecedented volumes. The import volumes overwhelm marine terminals at our ports, delaying ship arrivals, loading, unloading, due to:

- congestion in and around the terminals
- unlike foreign ports, ours are not fully operational 24/7
- terminals so full they cannot accept the return of emptied containers, or containers loaded with exports
- lack of sufficient labor and automation to allow the marine terminals to load/unload efficiently
- lack of information as to locations of containers, the times when they are available
- ocean carriers' failure to provide accurate notice of arrival and departure
- lack of appointments for truckers to enter terminal gates to retrieve import containers, or bring in containers with export cargo, or empty containers
- ocean carrier+chassis company agreements causing chassis shortages at inland and port terminals.
- lack of capacity of near-port distribution centers to accept/process massive volumes of import cargo.

Demurrage and Detention—FMC Intervenes Against Unreasonable Ocean Carrier and Marine Terminal Practices

Ocean carriers are charging truckers, importers and exporters daily fees, known as “detention” or “per diem”, when they do not return the carrier’s container to the terminal within the time allotted under the contract of carriage. The carriers and marine terminals also charge “demurrage” when the trucker or shipper does not remove an import container from a terminal quick enough, or returns the container to the terminals before the terminal wants it. (Exporters are frequently stymied from moving containers to the ships by the carriers’ and terminals’ own actions.) These charges are now, in aggregate, in the hundreds of millions of dollars. Most disconcerting, the carriers and terminals are charging these fees (\$125 to \$425/container/day) even when it is not possible for the truckers or shipper to actually access the terminal to return or retrieve the container. These fees are jeopardizing the financial viability of exporters and importers.

These charges have become so egregious that after 2 year investigation, the Federal Maritime Commission issued a Rule [https://www2.fmc.gov/readingroom/docs/19-05/19-05_fnl_rul_fr.pdf/] providing carriers and terminals guidance as to what would be reasonable demurrage and detention practices. To date the terminals and carriers have failed to implement these reasonable practices, thus continuing to collect millions of dollars of extremely burdensome and unfair charges. We now seek to have those unreasonable practices stopped; if the FMC cannot, shipper groups are proposing legislation to statutorily prohibit these practices.

Limited US Port Operations Creating Congestion and Delay

The Presidents of some ocean carriers have pointed to the limited hours of terminal gate operations at US ports, as a primary reason that carriers are unable to maintain schedule integrity, and thus congestion, as the terminals are unable to handle the massive volumes of imports, arriving on the mega-ships. Worldwide ports operate 24/7, while US terminal gates operate 5 days a week, fewer than 12 hours daily. Currently an expanding coalition lead by agriculture exporters and labor, is working to dramatically increase these hours, which may require Congressional persuasion.

Stranding US Exports

Historically, containers filled with imports (i.e., consumer goods, auto and manufacturing components) are railed east—particularly Chicago, Memphis, Kansas City, Dallas. Then once unloaded, the empty containers (which must eventually be returned to the West Coast ports to return to Asia) are filled with ag export cargoes; many of the containers must be ‘repositioned’ (by truck or rail) to the rural ag origin

points, for loading, before proceeding back to the West Coast ports. [NOTE: the same process occurs for containers bringing imports to East Coast or Gulf ports. However, the port dysfunction, carrier demurrage/detention charges, while significant at some East Coast ports, has not been as pronounced as at West Coast ports.]

Freight rates for imported cargo (consumer goods/manufacturing components) are higher (reflecting the high value of that cargo) than freight rates for our US exports (ag and forest products which typically are valued far less). With the current eCommerce economy, the volume of imports is so great that every container, on every ship is in demand for cargo moving eastbound Pacific. Currently freight charges from Asia to the US have been driven as high as \$10,000 or \$12,000 per container. Compare this to the export container carrying ag and forest products back to Asia, earning \$400 to \$1,800 freight charges.

Now, instead of letting a container move inland to be loaded with ag and forest products (often in rural areas), ocean carriers are declining that export cargo, in favor of immediately returning empty containers to Asia in order to quickly load US-bound imports which command unprecedented high freight revenue. Stranding our agriculture exports here in the US, making it impossible to deliver timely to foreign customers.

Exporters have hundreds of documented instances of ocean carriers declining or cancelling export bookings, often at the last minute, after the cargo is loaded in a container, already on train to the ports. Some carrier communications explicitly say their HQ want the containers back to Asia ... not to accept US westbound (export) freight.

The data shows this is a broad and continuing trend. It is not a matter of a shortage of containers, because the containers are on the ships heading back to Asia; however, so many are empty. Typically, about 65%+ of containers on a ship leaving US ports for Asia will be loaded with cargo. Today the number is often much lower, 50% or less, because carriers continue to turn down the export cargo that could be filling those containers. This CNBC article provides data and insight: <https://www.cnbc.com/2021/01/26/shipping-carriers-rejected-us-agricultural-exports-sent-empty-containers-to-china.html>

What Can FMC or Congress Do? Steps Worth Considering:

- a. Adopt the FMC's Detention/Demurrage Rule as statutory requirements; carrier/terminal must certify compliance as prerequisite to any demurrage or detention charge imposed on an importer or exporter.
- b. Prohibit carriers from refusing or cancelling export bookings when the ship has capacity to safely carry export cargo. Burden of proof (to show lack of capacity) shall be on the carrier.
- c. Establish and fund the FMC's Office of Consumer Affairs & Dispute Resolution Services (CADRS) to assist and protect the interests of US consumers (shippers, OTI's and truckers) of the ocean transportation services provided by MTO's and VOCC's.
- d. Convene the parties to begin full 24/7 operation of ports (including gates).
- e. Ocean carriers prohibited from entering into agreements that restrict availability of container chassis.
- f. Mandate that ocean carriers provide and update accurate Earliest Return Date, so exporter can know when to return container to terminal.

Mr. CARBAJAL. Thank you, Ms. Jacobson.

We will now proceed to Mr. Frank Ponce De Leon.

Mr. PONCE DE LEON. Good morning, Chairman Carbajal, Ranking Members Graves and Gibbs, and members of the subcommittee. Thank you for inviting me to testify today. My name is Frank Ponce De Leon, I am the International Longshore and Warehouse Union coast committeeman serving on our highest executive body within the ILWU Coast Longshore Division.

I began working as a registered longshoreman in 1982. In my 40 years on the waterfront, I have worked nearly every position on the docks, capping my career as a highly skilled crane operator of the massive ship-to-shore hammerhead cranes.

In speaking today, I speak for over 22,000 men and women represented by the ILWU's Coast Longshore Division, working at all

29 ports on the west coast. The cargo our members unload ends up in every congressional district in the United States.

The ILWU Coast Longshore Division shares the subcommittee's concerns about port congestion and container shortages. We believe these problems are linked to the declining investment in both our infrastructure and American port workers. The foreign conglomerates, who lead the vast majority of America's marine terminals, terminals that are almost all publicly owned, consistently put their own profits over maximizing efficiencies. No one is questioning their right to make money, but they are making those profits operating in public ports built on public money, and with our taxpayer dollars.

The ILWU believes that the public infrastructure that makes up our Nation's freight supply chain should be used to prioritize the American economy and the American workers. We believe the Federal Government has a responsibility to stop the slow degrading of our ports and the skilled workforce that has made these ports the best in the world.

For example, chassis management and maintenance needs to be brought back to the waterfront. In 2015 the terminal operators divested from the ownership and control of the chassis needed to move containers. This move saved them money, and has caused systematic delays, shortages of chassis, and extra steps that haulage carriers have to take. What is ironic, in fact, we currently have a terminal operating under the old chassis model that now is charging shippers a premium for this expedited service.

Next, while continuously setting records over the past year, even during the pandemic, we still face manpower shortage at the port, and our employers have now acknowledged that there is a need for a higher skilled set of workers. Terminal operators have overly relied on the temporary casual workers. Casuals are junior workers who make lower wages and receive no benefits. These workers are also not trained in higher skilled positions. To effectively meet the demands of the pandemic and other fluctuations in our industry, the ILWU Coast Longshore Division believes that there needs to be an investment in the promoting and training of longshore workers for long-term employment.

ILWU welcomes expanding gate hours. Terminal operators already have the right to extend hours, but often don't do it. Once again, those decisions seem driven by short-term cost-cutting measures. Extra gate hours, supported by extended operations at connecting points in the supply chain, may come at an individual cost, but they are critical in reducing cargo backlogs.

We also believe the FMC needs the powers to oversee and enforce new rules for demurrage and detention. Our current rules were supposed to lead to faster removal and return of containers. These days the rules are frequently gamed by the powerful players in the supply chain. Big shippers avoid the fees by signing contracts that give them priority to unload their containers first, a practice that further slows the overall processing of cargo. In the end, small shippers are left to wait and pay demurrage.

In conclusion, our freight system was once the envy of the world, not just because we invested wisely in our infrastructure, but because we also valued our workers. I value our supply chain work-

ers, the men and women of the ILWU who continue to put their lives on the line to ensure that our ports remain at being the best, despite all the challenges.

Thank you for inviting me to testify today, and I welcome any of your questions.

[Mr. Ponce De Leon's prepared statement follows:]

Prepared Statement of Frank Ponce De Leon, Coast Committeeman, Coast Longshore Division, International Longshore and Warehouse Union

Chairman Carbajal, Ranking Member Gibbs, and Members of the Subcommittee, thank you for the invitation to testify today. I am Frank Ponce De Leon, and I am a Coast Committeeman serving on the highest executive body within the International Longshore and Warehouse Union's (ILWU) Coast Longshore Division (ILWU Coast Longshore Division).

I began my career as a longshore worker at the Ports of Los Angeles and Long Beach in 1982. Three generations of my family have worked at these southern California ports, which combined are America's largest port complex. In my almost 40 years on the waterfront I have worked in nearly every position possible on the docks, capping my career as a highly skilled operator of Hammerhead Cranes, the massive ship-to-shore cranes that are the iconic structures within every major container port in the world.

I am speaking today on behalf of the more than 22,000 men and women who are represented by the ILWU Coast Longshore Division. Our union represents the hard-working longshore workers, marine clerks, foremen/walking bosses and casuals at all 29 West Coast ports. The ILWU also represents thousands more working in warehouses further within our freight supply chain. The cargo we move off of ships on the Pacific Coast ultimately arrives in every Congressional District in the United States.

The ILWU Coast Longshore Division shares the Subcommittee's concerns about congestion and related issues caused by declining investment in both infrastructure and the American workers who have made our ports and our supply chain the most productive in the Western Hemisphere. This hearing is a timely reminder of the consequences of neglecting to hire and train the skilled workers that make our economy globally competitive. Make no mistake, the shortage of containers and delays in goods movement are a direct result of rent seeking by the foreign conglomerates who lease the vast majority of America's marine terminals, terminals that are in fact mostly publicly owned. They have consistently prioritized their own, short-term profits over the domestic benefits of operational efficiency and the greater good of benefitting America's economy. I do not question their right to pursue profits, but they are making those profits by operating in public ports, built and dredged with local, state and federal taxpayer funds. They operate along roads, canals and rail spurs built by American taxpayers. We believe that we have a responsibility to ensure that our national freight supply chain is used to benefit all Americans including the port workers the ILWU Coast Longshore Division represents.

There are solutions to the challenges our ports and our port customers are facing. If we fail to act now we will unquestionably face a continuing decline in the resiliency of our supply system and increasing delays and bottlenecks. Here are some examples:

Chassis—The ILWU Coast Longshore Division supports restoring the handling of chassis to the practices used on the West Coast prior to 2015. Under that long established system, the chassis required to move containers by truck and rail into and out of ports remained on the waterfront and were maintained and readily available on the waterfront. That meant chassis inventories were efficiently managed and quick to locate and repair. In 2015, the terminal operators divested from the ownership and repair of chassis to third parties. Since that time, we have regular chassis shortages and a backlog of out of service equipment. No chassis mean trucks cannot pick up the containers that are stacked in our ports. Separate ownership of chassis also means truckers must often make separate stops to pick up and return the required chassis, significantly slowing the movement of containers. In fact, we currently have a terminal at the Port of Los Angeles operating under the old model that is charging shippers a premium for this "expedited" service. We believe federal policy should press at a minimum for a return of chassis repair and pickup to the waterfront as soon as possible.

Labor—One of the ILWU Coast Longshore Division's primary roles is to provide the workers as requested by the employer to move goods. The number of workers called to work is 100 percent determined by the terminal operators that lease our port properties. Crew size is determined by these largely foreign-based operators, who try to complete the work at the lowest possible cost. We frequently see scenarios in which calling larger crews, or additional workers in key positions, would substantially increase the number of moves a crew can make. When lower operational costs are more important than overall productivity, congestion increases and the larger economy suffers.

Night and weekend gates—The ILWU Coast Longshore Division supports expanding the times for night and weekend gates. Our workers welcome the additional work, and opening the ports around the clock would go a long way to easing the congestion and keep cargo flowing. Expanding gate times, however, is not our decision. We also note that simply expanding gate hours will have no benefit if the next points out into the supply chain are closed for the night or weekend. Night and weekend gates work best when they are part of a coordinated effort to move goods.

Expand the workforce—Steady growth in cargo volumes would be expected to be matched by expanding the longshore workforce. This has not been the case on the West Coast. Terminal operators have resisted adding new members to the permanent (or registered) longshore workforce to keep pace with ever-growing cargo volumes. Instead they have relied increasingly on temporary workers, known as casuals, who make lower wages and do not qualify for benefits. These more junior workers can spend years working at a port and still not be a registered worker. This disincentive prevents us from growing and training for the longer term the experienced longshore workers needed to remain competitive.

Invest in training—Terminal operators have systemically underinvested in training the longshore workforce. Even our employers association has acknowledged that there is now a shortage of higher-skilled workers. That is because the employers have continually made the decision to not hire, train and order sufficient numbers of workers. To effectively meet the demands of the pandemic and other fluctuations in the industry, the ILWU Coast Longshore Division believes that the training and staffing should increase to meet the peaks, not the valleys. We welcome the long overdue hiring of over 3,000 new workers at the Ports of Los Angeles and Long Beach over the past year. Roughly 90 percent of the new hires, however, were casuals who can only perform basic functions such as the lashing of containers on vessels and driving yard tractors. They cannot operate cranes, top handlers, side picks, and other container handling equipment because they lack the hours of experience to first earn their registration status, and only then do they begin the weeks-long process to train to operate complex equipment.

Review demurrage and detention rules—Demurrage and detention rules were established to encourage timely removal and return of containers. In recent years it has increasingly become a profit center for carriers and terminal operators. Carriers have increased their fees annually even during the pandemic. Larger volume shippers can often avoid the fees due to preference handling provisions in their contracts that grant priority movement of that shipper's containers. This premium service is yet another profit center for carriers, but also complicates and slows the overall processing of cargo. The ILWU Coast Longshore Division believes Congress needs to equip the Federal Maritime Commission with sufficient resources and authorities to effectively referee the demurrage playing field. Action is required to restore a priority for efficient movement of goods through America's ports.

Automation—Automation has downsides that can disrupt the national supply chain and hurt our economy: Human-powered ports cannot be hacked like automated infrastructure can. Longshore workers move cargo with record-breaking results, we support our communities and pay U.S. taxes. Automation primarily benefits the Asian and European terminal operators that lease our public port terminals.

Automation myths—Finally, we are seeing increasing calls for automation of maritime terminals and also for government subsidies for automation. Advocates for automation are trying to sell a fantasy that automation can solve congestion. We do not have to debate whether that statement is true. We already know it is wrong based on the track record of automated terminals around the world. In December 2018, the global consulting firm McKinsey studied the performance of the world's leading automated terminals. The report McKinsey prepared was designed to promote automation projects. Despite that pro-automation bias, the report concludes that automated port terminals are on average seven to 15 percent less efficient. The report acknowledges that many industry stakeholders who have worked with automated technology—including the ILWU Coast Longshore Division—actually believe the drop in efficiency is between 30 and 50 percent. Automation is not only slow, but it also lacks the flexibility to respond to surges in cargo like we are currently

experiencing. It is far more expensive to build and equip than modern manned facilities, and all of the automated equipment on the market is foreign manufactured.

Promoters of automation in fact have one goal, to cut labor costs. These same advocates are clamoring for taxpayers' subsidies because without them the high capital costs for automation projects makes them bad investments. The ILWU Coast Longshore Division strongly opposes these frankly stupid proposals to use American taxpayer dollars to gift a subsidy to foreign conglomerates to buy foreign built automated equipment in order to lay off American workers at publicly owned and funded ports that also results in making those very same American ports dramatically less efficient.

I thank the Subcommittee and its members for giving me this opportunity to testify today, and I would be happy to answer any questions that you may have for me.

Mr. CARBAJAL. Thank you.

We will now move on to Mr. Eugene D. Seroka.

Mr. SEROKA. Good morning, Chairman Carbajal, Ranking Members Graves and Gibbs, and other distinguished Members of Congress. I would also like to thank the subcommittee and Chairman DeFazio.

I am Eugene D. Seroka, executive director at the Port of Los Angeles, with more than 33 years of experience in maritime shipping logistics, both here in the United States and abroad. Thank you for inviting me to participate today.

I appreciate the topic of today's hearing. When our supply chains work as they should, they operate unnoticed, delivering essential goods, creating jobs and economic prosperity across our Nation.

As America's busiest container port, the Port of Los Angeles has an outsized responsibility to move the country's cargo. While one-third of our cargo is consumed within the southern California region, fully two-thirds goes to the national market, reaching every congressional district in the United States. Changes in consumer behavior, trading patterns, and manufacturing supply chains are reflected in our volume.

A year ago, after nationwide stay-at-home orders went into effect, cargo volume here at the port dropped 20 percent. There was plenty of space available at our marine terminals, and we saw a large number of canceled vessel sailings. Now, a year later, we find ourselves 11 months into an unprecedented import surge, while export volume continues to languish. Import volume has taken off, as consumers shifted from spending on services to goods. This was also fueled by stimulus dollars. As a result, the Port of Los Angeles has averaged more than 900,000 container units per month every month since last July; 900,000 used to be a strong month in our peak season.

Just last week we commemorated handling our 10 millionth container in fiscal year 2021, a first for any port in the Western Hemisphere. And today I will announce 1 million TEUs crossed our docks in the month of May. To give you a sense of scale, 10 million containers, laid end to end, would wrap around the world 1½ times. By any measure, it is an amazing accomplishment for our terminal operators and longshore workers alike.

Productivity at the port has never been higher. Before the pandemic we averaged 10 containerships at berth per day. During this surge we are handling 15 ships daily. Longshore women and men are filling 50,000 work shifts a week, well above our 3-year running average. Still, the massive influx of cargo we have seen has placed

enormous strain on the entire system. Our tarmacs remain 95 percent utilized, when 80 percent is considered full. As a result, truck turn times have increased. With terminals full, ships take longer to process, and incoming arrivals are directed straight to anchor.

At its peak, we had 40 container vessels at anchor back in February, waiting an average of nearly 8 days. Today, through a lot of hard work and collaboration, we have reduced that backlog by 75 percent, with an average wait time of 5 days. Today at the port we are working 15 ships, with 12 at anchor in the San Pedro Bay, 10 of those destined to Los Angeles.

Despite nearly 2 billion square feet of warehouses in our region, those facilities filled up, and our importers have resorted to using containers as temporary storage. That equipment is not cycling back into the system fast enough. On-terminal boxes are averaging 4 days until pickup, versus 2, pre-surge. Marine terminal utilization remains well above designed capacity. Containers waiting to be loaded on trains now sit for 9 days on average, when in normal times they would wait 2 days.

All of this leads to increased complexity and shipping costs, the impacts to exporters who have been challenged on three fronts: our own trade policy, strength of the U.S. dollar, and supply-demand issues pushing record numbers of empty containers back to Asia.

In summary, there are just a few points I would like to emphasize.

First, while these supply chain issues are global, this is still a relationship-based business. We continue to work closely with the Agriculture Transportation Coalition, the California secretary of agriculture, and so many other industry stakeholders to drive solutions and improve.

Second, robust investment in our freight system is needed, especially in the area of digitization. We have rolled out four such digital products in response to user needs, and I have advocated for a nationwide adoption of port community systems, which can help businesses and service providers improve their supply chains.

Third, we need a national strategy to enhance competitiveness of our supply chains, including getting American products to export markets, and supporting key industries here at home, like agriculture and manufacturing.

With that, I will conclude my comments. Thank you for joining today, and I will be happy to answer any questions you may have.

[Mr. Seroka's prepared statement follows:]

Prepared Statement of Eugene D. Seroka, Executive Director, Port of Los Angeles, California

INTRODUCTION

Good morning Chairman DeFazio, Chairman Carbajal, Ranking Member Graves, Ranking Member Gibbs, Members of the House Subcommittee on Coast Guard and Maritime Transportation, and other distinguished Members of Congress. Thank you for the invitation to participate in this important hearing.

I am Eugene D. Seroka, Executive Director at the Port of Los Angeles. I concurrently serve as President of the California Association of Port Authorities and as a Board member of the American Association of Port Authorities. In addition to spending the last seven years at the Port of Los Angeles, I have more than 33 years of experience in the maritime shipping industry, both in the United States and

abroad. Our industry is very much a relationship-based business and, throughout my career, I have been privileged to engage with every link of our global supply chain.

I greatly appreciate the purpose of today's hearing because I believe a well-functioning supply chain is in the national interest. When our supply chains work well, they operate largely unnoticed, delivering essential goods, creating jobs, and driving economic growth and prosperity across the nation. However, congestion at major trade gateways around the world, and high-profile incidents, such as the grounding of the Ever Given in the Suez Canal, have drawn public attention to widespread supply chain disruptions and their impact on American consumers and businesses.

Today, I hope to share some observations from our unique vantage point and suggest some courses of action that can position the United States to reassert leadership and convert its supply chains into a competitive advantage.

THE PORT OF LOS ANGELES

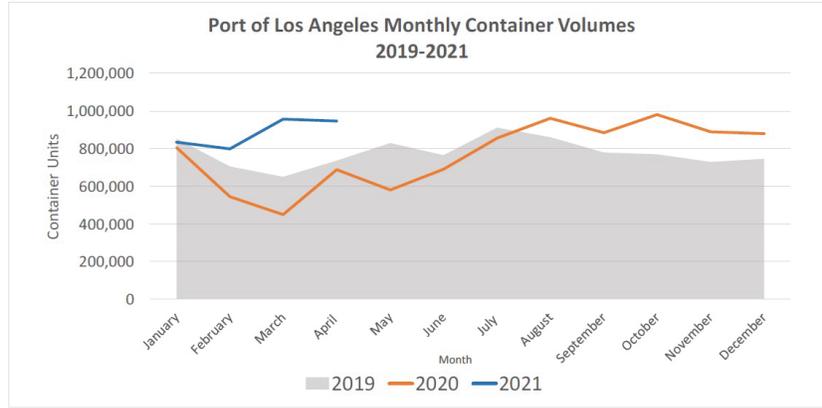
The Port of Los Angeles is the busiest container port in the nation. In 2020, the Port handled 9.2 million twenty-foot equivalent units (TEUs, the standard measure of container cargo). For the 12-month period ending this month, we will have moved over 10 million TEUs—a record amount for a Western Hemisphere port. The operational scale of the Port of Los Angeles is immense: 27 terminals, 270 berths, roughly 200,000 unique shippers, 1,654 annual ship calls, 100 daily trains, and 60,000 daily truck moves. We also operate cruise, liquid bulk, and automobile business lines, however container cargo is the largest share of our business.

Together with our neighboring port in Long Beach, we comprise the San Pedro Bay Port Complex, which handles nearly 40 percent of all containerized imports and 30 percent of all containerized exports for the United States. Cargo through this complex flows to and from 160 countries across the globe and reaches every Congressional district across the nation. In fact, only one-third of the cargo handled at the Port is consumed within the LA region, while fully two-thirds of our cargo is destined for the national market. As a result, changes in consumer behavior, trading patterns, and manufacturing supply chains show up in our volumes.

AN UNPRECEDENTED CONSUMPTION SURGE

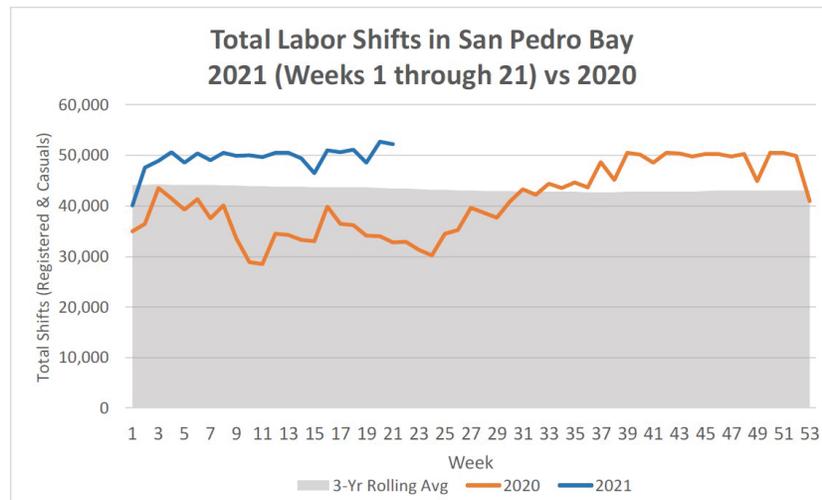
In order to contain the spread of the novel coronavirus, the Chinese central government shut down manufacturing in early 2020. As the virus spread to the United States, emergency stay-at-home orders effectively shut down large parts of the economy. The resultant effect of these non-pharmaceutical interventions was a huge drop in cargo volumes—an 18.5 percent decrease year-over-year (May 2019 to May 2020). At this time, our terminals saw very little activity and we observed a large number of cancelled sailings.

As goods consumption resumed, businesses first worked down inventories that were well-stocked with goods forwarded in advance of tariff milestones imposed between August and December 2019. By the middle of 2020, personal consumption expenditure shifted away from services and into goods consumption. This was further fueled by federal stimulus checks. Online purchases doubled over 11 months as quarantined shoppers acquired everything from exercise equipment to athleisure wear to new furniture. By August, cargo volumes began to surge as businesses began to replenish inventories.



Dating back to July 2020, the Port has experienced an average monthly container volume of 900,000 TEUs. Comparing the first four months of 2021 to previous years, they are 42 percent higher than 2020 volumes and 20 percent above 2019 volumes. In cargo value, overall trade in the first quarter rose more than 25 percent year over year, from \$56.3 billion in Q1 of 2020, to \$70.6 billion this year. This pandemic-induced surge is the main reason we have pierced the 10 million TEU mark for a single year.

Handling this amount of cargo is, by any measure, an amazing accomplishment for our terminal operators as well as our longshore women and men. Productivity at the Port has never been higher. Before the pandemic, we averaged 10 ships a day; during this surge, we have averaged 16 to 17 ships a day. Our longshore workforce has been averaging 50,000 work shifts a week, well above the 3-year average, even amidst the pandemic.



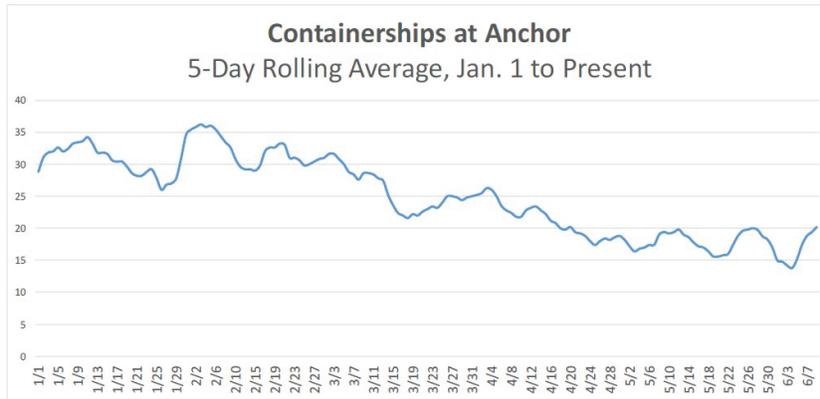
SUPPLY CHAIN IMPACTS

The surge in volumes has placed strain on the system:

- **Warehouses:** Despite nearly 2 billion square feet of warehouses in our region, these facilities filled up and resorted to using containers as temporary storage. The amount of time it takes for a container and chassis to cycle back to the Port—what we call “street dwell”—went from an average of 3 days to 7 days.
- **Marine Terminals:** Shippers need to continue to pick up their boxes here at the Port, as the terminals continue to fill up with containers. The duration of time

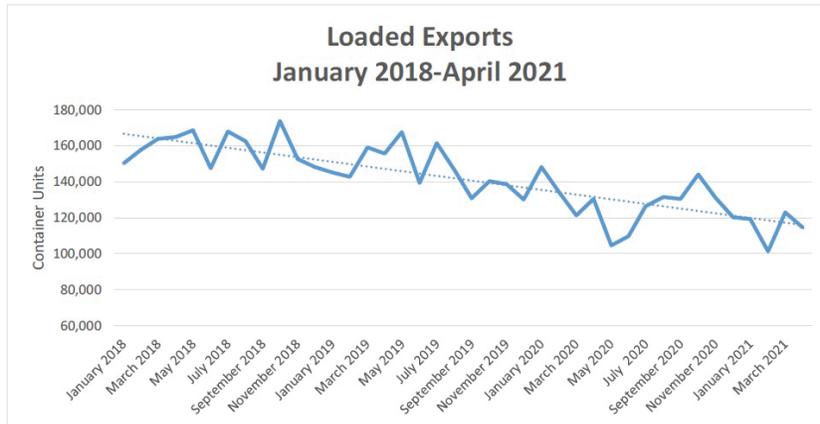
a container remains in a terminal before it is moved, is currently 4 days, a decrease from five days previously recorded, and 4 days pre-pandemic. Marine terminal utilization remains elevated with terminal tarmacs 95% utilized (80% is considered “full”).

- **Turn Times:** When terminal tarmacs are stacked with containers, it takes longer for trucks to pick up the boxes, so “truck turn times” increase. Ships also take longer to process, causing incoming ships to be directed to anchor.
- **Ships at Anchor:** Typically, ships arrive and are assigned a berth for unloading and loading of cargo; however, in a congestion scenario, ships are directed to anchor off the coast of California. At peak, we had 40 ships at anchor, waiting an average of nearly 8 days. Today, through a lot of hard work, we are hovering around 20 ships, waiting an average of 5 days.



- **Rail:** To further compound the situation, the Arctic Blast that hit much of the country earlier this year caused a shortage of rail cars. The time that containers sit, waiting to be loaded on to a train—what we call “rail dwell time”—increased from 2 to 8.6 days. At peak, rail dwell was at 11.6 days in March.

In this kind of environment, shippers experience tremendous hardship, which has exacerbated an already challenging situation. Our export community, for example, has already been by the onset of tariffs and retaliatory tariffs in 2018.



MOVING FORWARD

I would emphasize three points in support of supply chain competitiveness:
Development of Policy Alignment: First, the supply chain disruptions we see are a global phenomenon, driven by the surge in consumer demand for goods. However, an effort to align policies and programs toward competitiveness of the nation’s sup-

ply chains is a worthwhile effort. Clearly, a well-functioning supply chain is in the national interest, but effective federal support to improve the performance of our supply chains must be developed with a solutions-oriented approach and with representation from relevant federal agencies and supply chain stakeholders, including cargo owners (import and export), port authorities, liner carriers, marine terminals, trucking, railroads, warehouses, and customs brokers and freight forwarders.

Importance of Information Sharing: Second, our freight system requires robust freight infrastructure investment, and importantly, this investment should include accelerated and integrated digitalization of the supply chain. For example, port community systems—which are already in use in the advanced economies of Asia and Europe—should be used in our major gateway ports, and these systems should be interconnected. Such integrated digital platforms can equip cargo owners and service providers with the information they need to optimize their supply chains and enhance resilience to future supply chain disruption.

In 2020, the Port of Los Angeles used its port community system, the Port Optimizer, to share real-time information on incoming cargo volumes (the Signal), equipment return (the Return Signal), and overall port performance (the Control Tower).

National, Sector-Based Supply Chain Strategy: Third, we must revisit a national strategy that targets infrastructure investment and supply chain performance to key industrial sectors of our economy. Such a strategy should focus on exports of American products, but also on procurement of essential goods for American businesses and consumers. For example, we must reverse the impact that retaliatory tariffs have had on our agricultural exporters.

We must enhance their connectivity to major trade gateways through infrastructure investment and leverage digital solutions that make it easier for them to marshal the equipment necessary to reach foreign markets. At present, the Port of Los Angeles is working with stakeholders in California's Central Valley to improve connectivity to our trade gateway and enhance the competitiveness of the California agricultural community. Such a model can be replicated at the national level.

Thank you for your consideration.

Mr. CARBAJAL. Thank you.

We will conclude our panel presentation with Ms. Jen Sorenson.

Ms. SORENSON. Thank you so much, Mr. Chairman, Ranking Member Gibbs, Congressman Graves, Congressman DeFazio, thank you for the opportunity to testify on an issue of critical importance to agriculture and to the U.S. pork industry.

I am the communications director for Iowa Select Farms in Iowa, and I am president of the National Pork Producers Council, an association representing over 60,000 U.S. pork producers.

Expansion of export markets is so critical to the continued success of our industry. As the world's top exporter, U.S. pork annually ships more than \$7 billion to foreign destinations. The past few years have been incredibly difficult for U.S. hog farmers. After more than 3 years of trade retaliation that has limited pork producers' ability to compete effectively around the globe, the COVID pandemic unleashed unprecedented challenges for all of us, for the entire food supply chain.

Now, just as producers and production has returned to some sense of normalcy, shipping delays at our international ports are causing serious issues for U.S. pork producers and other agricultural exporters. If not addressed soon, these delays have the potential to cause significant backup at our processing plants and to our hog farms, once again placing producers in a difficult situation, not to mention the animal welfare implications caused by the backup of animals on our farms.

On an annual basis, U.S. pork producers have historically exported more than one-quarter of production to over 100 countries. These countries include those in Latin America and the Asia Pa-

cific region, and they have come to trust our affordable, safe, and reliable pork supply. And like other sectors of the U.S. economy, we rely on vessel operating common carriers to ship product overseas.

Typically, shipping containers loaded with imported goods are unloaded, sent to rural areas, filled with U.S. pork and other agricultural commodities, and then shipped abroad. However, the COVID pandemic, as we know and have talked about, has increased these shipping issues as the United States imported higher amounts of consumer goods, causing a backlog at ports throughout the country. This backlog is due to numerous factors, including congestion in and around the terminals and limited hours of operation.

West coast ports, ports which served a growing Asia Pacific market, are being significantly impacted by this backlog. Currently, there are over 1,000 containers of pork sitting at west coast ports, waiting to be exported. Compounding the situation, carriers are failing to provide accurate notice to exporters of arrival, departure, and cargo loading times, and then imposing financial penalties on exporters for missing these loading windows. These financial penalties, which are paid to the very carriers that are canceling the orders, have been deemed unreasonable by the Federal Maritime Commission. Ultimately, these additional costs are passed down the supply chain to farmers.

Shipping delays are affecting all of U.S. agriculture, including pork. The Asia Pacific region is among our top market, due to its cultural preference for pork. Thanks to recent trade agreements with China and Japan, spearheaded by NPPC, U.S. pork exports to those countries saw a significant uptick in 2020. In fact, in 2020, U.S. pork sent 52 percent of all exports—worth \$3 billion—through west coast ports in Long Beach, L.A., and Oakland, California, as well as Seattle and Tacoma, Washington. These shipping delays to the Asia Pacific region are increasing costs to U.S. pork, and positioning the United States as an unreliable trading partner. If left unaddressed, this might also negatively impact future trade agreements with Southeast Asia trading partners.

The Agriculture Transportation Coalition, of which NPPC is a member, has compiled three solutions: number one, expand hours for U.S. ports; number two, mandate that ocean carriers transport export cargo at safe capacity levels; and number three, support and expedite the Federal Maritime Commission enforcement of a rule that declared the penalties being imposed on exporters as unreasonable.

I would like to thank you for the opportunity to testify, and I look forward to questions.

[Ms. Sorenson's prepared statement follows:]

Prepared Statement of Jen Sorenson, President, National Pork Producers Council

INTRODUCTION

Chairman Carbajal, Ranking Member Gibbs, and members of the committee, I appreciate the opportunity to discuss an issue of critical importance that impacts U.S. pork producers and all of U.S. agriculture.

My name is Jen Sorenson. I am the communications director for Iowa Select Farms in West Des Moines, Iowa, and president of the National Pork Producers

Council (NPPC), a national association representing the interests of more than 60,000 U.S. pork producers.

The U.S. pork production system, the most advanced in the world, is characterized by robust competition, innovation and efficiency. Last year, our producers marketed more than 131 million hogs despite significant disruptions caused by the coronavirus pandemic. Those animals provided more than \$22 million in farm-level income. Expansion of export markets is crucial to the continued success of the U.S. pork industry. As the world's top exporter, U.S. pork annually ships more than \$7 billion to foreign destinations.

The past few years have been incredibly difficult for hog farmers. After more than three years of the trade retaliation that limited pork producers' ability to compete effectively around the globe, the COVID pandemic unleashed unprecedented challenges for the entire food supply chain. Now, just as producers are returning to normalcy, shipping delays at our international ports are causing serious issues for U.S. hog farmers and other agriculture exporters. If not addressed soon, the delays have the potential to cause significant backups from our processing plants to hog farms, once again placing producers in a tenuous situation.

THE SITUATION

On an annual basis, U.S. pork producers have historically exported more than one quarter of production to more than 100 countries. Key export markets include countries in Latin America and the Asia-Pacific region. Countries around the world have come to trust the supply of our affordable, safe and reliable pork.

Like other sectors of the U.S. economy, U.S. pork relies on vessel-operating common carriers (VOCCs) to ship product overseas. The COVID-19 pandemic has exacerbated shipping issues, as the United States imported higher amounts of consumer goods, causing a backlog at the ports. This backlog at U.S. ports, overwhelming marine terminals, delaying ship arrivals and loading/unloading, is due to a variety of factors including:

- Congestion in and around the terminals;
- Limited hours of operation. The lack of 24/7 operation is unique to U.S. terminals;
- Terminals that are too full to handle the containers;
- Lack of sufficient labor and automation to allow the marine terminals to load/unload efficiently;
- Lack of information as to locations of containers or the times when they are available; and
- Lack of capacity of near-port distribution centers to accept/process massive volumes of import cargo.

While East Coast ports are experiencing similar issues, the impact has been more severely felt on the West Coast.

Previously, shipping containers loaded with imported goods were unloaded, sent to rural areas, filled with U.S. pork and other agricultural commodities, and then shipped abroad. However, due to the above-mentioned factors, in addition to lucrative freight rates paid by the import cargo, many VOCCs are immediately returning empty containers to their overseas ports of origin, stranding U.S. agriculture commodities and making it impossible to deliver timely product to foreign customers.

Compounding the situation, carriers are failing to provide accurate notice to exporters of arrival/departure and cargo loading times, and then imposing financial penalties—which are paid to the very carriers that are cancelling the orders—have been deemed unreasonable by the Federal Maritime Commission. Exporters have hundreds of documented instances of ocean carriers declining or cancelling export bookings, often at the last minute, when the cargo is loaded in a container, already on train to the ports. Ultimately, these additional costs are passed down the supply chain to farmers.

The main problem is carriers are not shipping back as many fully loaded containers as they are receiving. At the Port of Long Beach alone, the number of empty containers departing outnumbers loaded containers by more than two to one.¹ Unfortunately, this is causing a cascading effect on the entire transportation system. Since containers are not loaded onto a vessel and instead sit at terminals, they incur significant detention and demurrage fees at the port. The domino effect continues, tying up equipment at the ports, signaling packing plants that they need to

¹ <https://polb.com/port-info/wave-weekly-advance-volume-estimate/>

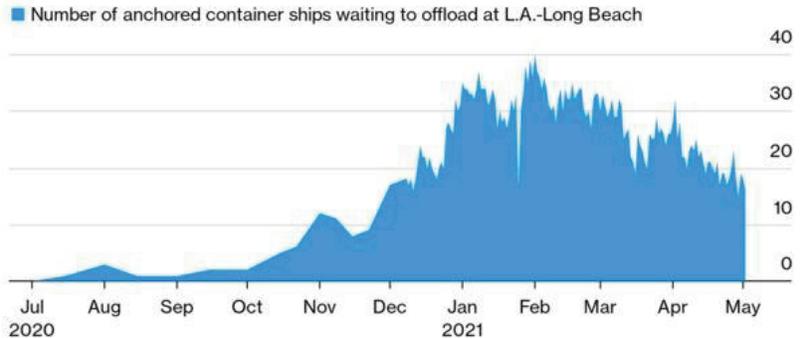
adjust harvest capacity, and backing up supply all the way to the farm. This same scenario is being replicated throughout all of agriculture.

It is not just Asian markets seeing these delays. Hapag-Lloyd, the world's fifth-largest container line, recently halted all bookings coming from Latin America. The situation seems to be worsening as bottlenecks continue.

As seen in the chart below, the problem has only grown worse in the last year. At first glance, while it can appear the situation has improved the past few months at the Los Angeles/Long Beach port, in truth there were fewer ships there in May due to carriers being diverted to less congested ports. Of course, that does not resolve the issue; it just expands the bottlenecks to other ports throughout the country.

Choke on the Water

Bottlenecks at key West Coast ports have lingered since November



Source: Marine Exchange of Southern California & Vessel Traffic Service L.A./Long Beach

Bloomberg

PORK IMPACTS

As mentioned, the U.S. pork industry has historically exported more than one-quarter of annual production. The Asia-Pacific region is among our top markets due to its cultural preference for pork. Thanks to recent trade agreements with China and Japan—spearheaded by NPPC—U.S. pork exports to those countries saw a significant uptick in 2020 by 75 percent and 6.7 percent respectively, compared to 2019.

In 2020, U.S. pork sent 52 percent of all exports—worth \$3 billion—through West Coast ports in Long Beach, Los Angeles and Oakland, Calif., as well as Seattle and Tacoma, Wash. These shipping delays to the Asia-Pacific region are increasing costs to U.S. pork and positioning the United States as an unreliable trading partner. Frequent, last-minute cancellations of U.S. pork shipments have undermined shipment certainty and eroded trust with buyers our industry has invested heavily to earn. We have already heard of large international retailers and restaurant chains looking at sourcing pork from other countries rather than waiting for U.S. product. If these shipping delays continue, more retailers are likely to follow suit.

If left unaddressed, this may also negatively impact future trade agreements with Southeast Asian trading partners, as we seek better market access for U.S. pork.

High domestic demand for U.S. pork over the past year—due to COVID restrictions and more consumers eating at home—has helped offset some of the harmful impacts of these international shipping delays. However, now that the United States is lifting its COVID restrictions and pork is in higher demand in more countries, we may soon find ourselves in a situation where we are not able to fill orders on time.

THE SOLUTIONS

As I have outlined, the shipping delays at our nation's ports are caused by myriad factors. Addressing them requires urgent attention, as this impacts all of U.S. agriculture, a significant source of revenue for our nation's economy.

Because these shipping delays affect a wide variety of agricultural commodities, the Agriculture Transportation Coalition (AgTC) has helped coalesce likeminded associations to address concerns and develop suggested solutions. AgTC, of which NPPC is a member, has sent correspondence to the administration over the past few months, urging for a quick resolution to this matter.

Among solutions, AgTC and NPPC recommend the following:

- Expand hours for U.S. ports: The U.S. marine terminal gates typically are open and operating between 8 and 16 hours a day, five or six days per week, compared to Asian terminals that work 24/7. To relieve congestion, U.S. ports must expand their operating hours.
- Mandate ocean carriers carry export cargo at safe capacity levels: Typically, about 100% of the containers on an eastbound (e.g., Asian imports to North America) ship are loaded with cargo, while approximately 70–75% of the westbound (e.g., U.S. exports) containers are loaded, with the remainder left empty; and
- Support and expedite the Federal Maritime Commission (FMC) enforcement of its detention and demurrage rule: FMC has found that carriers and terminal operators were issuing unreasonable penalties for leaving a container or maintaining possession of a container in a marine terminal for longer than allowed. Despite FMC ruling the penalties were unreasonable, the carriers and terminals have failed to follow this guidance, continuing to cumulatively issue hundreds of millions of dollars of demurrage and detention invoices to U.S. exporters/importers.

We urge congress and the administration to remain engaged, working with all parties to find a solution to ensure the continued, uninterrupted supply of U.S. pork and other agricultural products to our overseas customers.

CONCLUSION

Expanding market access is critical to the success and future growth of U.S. pork producers. Over the last decade, the United States has been the top exporter of pork in the world. In any given year, the U.S. pork industry ships product to more than 100 countries.

U.S. pork producers need Congress and the administration to work together to quickly engage and address these shipping delays, enabling hog farmers to continue to lead the way as a vibrant American farm sector that is critical to the rural and overall U.S. economy.

APPENDIX

Previous correspondence to administration officials on shipping delays:

- Feb. 24, 2021 letter to President Biden from 70+ agriculture organizations;²
- Feb. 25, 2021 letter to Federal Maritime Commission (FMC) Chairman Khouri from Sens. Boozman and Wicker;³
- March 2, 2021 letter to FMC Chairman Khouri from 24 senators⁴;
- March 2, 2021 letter from Rep. Schrier to FMC⁵;
- March 8, 2021 letter to FMC Chairman Khouri from senior members of the House Transportation & Infrastructure Committee and the Coast Guard & Maritime Subcommittee⁶;
- March 9, 2021 letter to Federal Maritime Commission Chairman Khouri by 111 House members⁷; and
- April 27, 2021 letter to Department of Transportation Secretary Pete Buttigieg from nearly 300 U.S. agriculture and forest products companies⁸.

² https://agtrans.org/wp-content/uploads/2021/03/Ag-Association-Letter-to-President-Biden-02-24-21_Final.pdf

³ <https://www.commerce.senate.gov/services/files/82EFDBA7-CFFF-424F-968A-8DE9F31F3ED9>

⁴ https://agtrans.org/wp-content/uploads/2021/03/03.02.21_Thune_Klobuchar_Final_with_signatures.pdf

⁵ <https://agtrans.org/wp-content/uploads/2021/03/Schrier-Letter-to-FMC-For-IMMEDIATE-Release.pdf>

⁶ <https://agtrans.org/wp-content/uploads/2021/03/2021-03-08-Big-4-Letter-to-FMC-on-Container-Shortages-and-Agriculture-Exports-003.pdf>

⁷ <https://agtrans.org/wp-content/uploads/2021/03/FMC-VOCC-final-letter-3.9.21-003.pdf>

⁸ https://agtrans.org/wp-content/uploads/2021/06/Ag_Export_Letter_to_Secretary_Buttigieg_04_28_2021.2.pdf

Mr. CARBAJAL. Thank you.

We will now move on to Member questions. Each Member will be recognized for 5 minutes, and I will start by recognizing myself.

Mr. Butler, I understand that at the marine terminals the ocean carriers ultimately pay the wages of the longshoremen through port fees. If the terminal gates are operating longer hours, as sought by some carriers you represent, are they willing to pay for training and additional hours?

Mr. BUTLER. Mr. Chairman, the World Shipping Council is not the employer representative for those labor relations, so I would hesitate to talk about what people would be willing to pay.

But I do know that there [inaudible] to extend hours, and that is something some of the other witnesses have addressed. It means everybody in the supply chain would have to be on-board with the program.

Mr. CARBAJAL. Thank you. I have gotten reports of shipping companies renegeing on contractual agreements with shippers in order to request more money, or ship higher value cargo. Is that true, from your understanding, as well?

Mr. BUTLER. We have heard the same complaints. I don't have visibility into individual contracts.

The only thing that I would say, Mr. Chairman, is when you hear a complaint like that, it is very important to get all of the facts, because—and Commissioner Dye referred to this a little bit earlier—there is a bit of a problem with the entire contracting structure, historically, in that there is a lack of commitment on both sides.

Frankly, shippers, cargo owners, don't want to commit large parts of their volume to a contract. Historically, they have done quite well playing the spot market. And so, when somebody tells you that the contract has not been fulfilled, you need to ask the question, "Well, was your minimum specified quantity covered," and now we are talking about something beyond that. Essentially, are you in the spot market?

So it is very critical to get all the facts, and I can't tell you about any given contract. I can tell you that ocean carriers are quite serious about fulfilling their end of the bargain with their service contract. That is how they keep relationships with their customers.

Mr. CARBAJAL. Mr. Butler, from your understanding, what could we put in place to get to that information that you are talking about, the full set of facts?

Mr. BUTLER. Well, I think the only way you get the full set of facts in any particular situation is really through the complaint and/or FMC-initiated enforcement process.

There are, as you know, millions and millions of containers, millions and millions of transactions, and thousands of service contracts floating around in this market. There is no way to have visibility into all of it at once. And I understand that it is frustrating to people. But the fact of the matter is, if you are going to examine a commercial relationship and whether both sides are keeping up their end, you have to look at that particular relationship on a transactional basis. And the FMC is in a position to accept those complaints, and also to initiate actions of its own.

And incidentally on this, I categorically reject the idea that shippers are being threatened with retaliation for bringing complaints. I just don't buy that.

Mr. CARBAJAL. Thank you. In your written statement you said that, in reference to placing a priority on agriculture cargoes, "it is not possible to arbitrarily favor one group of customers without disrupting the functioning of the entire system, to the detriment of all." I agree with your statement, but isn't that exactly what is happening with the prioritization of Asian imports by shipping empty containers at the detriment of west coast exporters?

Mr. BUTLER. Mr. Carbajal, the shipping industry takes the cargo that is presented to it. And as a number of the witnesses, including myself, have said today, what is really driving these problems at root is the massive increase in U.S. imports. And some people today have characterized that as essentially Asian exporters pushing product to the United States. But the fact of the matter is, from the shipping side, the majority of import cargo is contracted by U.S. importers. They are U.S. companies bringing these goods to the United States for U.S. consumers.

On the issue of the trade imbalance, there is no question whatsoever that that exacerbates things. In normal times it is 2 to 1, imports to exports, into the U.S. Right now we are basically at 3 to 1, imports to exports. And if you are going to keep the whole system moving, you do have to send empty containers back to those other origins. Otherwise, the whole thing stops.

Mr. CARBAJAL. Thank you, Mr. Butler.

Ms. Sorenson, could you comment on that? Are carriers taking your products? You have no issue or challenge going on?

Ms. SORENSON. We are having challenges right now. And the Agriculture Transportation Coalition's informal survey of ag commodities on average says 22 percent of ag export sales are not being performed, due to capacity issues.

This is about lost opportunities and an erosion of relationships. You look at Japan, and they have very discerning tastes. They want chilled pork. And when we have to freeze that pork down, and deliver it frozen, we lose a tremendous amount of value to U.S. hog farmers. And not only value, we erode that relationship that we have built over time with Japan. So we are definitely losing opportunities, and we are losing, collectively, as agriculture, 22 percent of our export sales.

Mr. CARBAJAL. Thank you very much. I have run out of time, so now I am going to go to Ranking Member Gibbs.

Mr. GIBBS. Thank you, Chairman. The first question would be to Mr. Butler, and then maybe also specifically to Mr. Seroka of the Port of Los Angeles. But my first question is, we know how much the containers' volumes have increased, even over 2019, but do we track—I suppose they do—what percentage of those containers are going back to Asia out of the Port of L.A. that, in general, for Mr. Butler, are empty? Do we know that data?

Mr. BUTLER. Mr. Gibbs, I expect Mr. Seroka, being a little closer to the port, probably has a better idea on that.

What I would repeat is something I mentioned a moment ago, and that is we have gone from an import to export ratio, in normal times of 2 to 1, to about 3 to 1 today. So there is no question that,

in order to keep the entire system moving, we are absolutely sending back more empties, simply because that is what you have to do to ultimately keep the entire round-trip balanced.

But as to a particular number, I do not have that.

Mr. GIBBS. Mr. Seroka, do you have any idea what is going on with Port of Los Angeles, empty containers leaving?

Mr. SEROKA. Yes, I do have a pretty good idea, Congressman. On average, during the course of the last 12 months, we have seen empty repositioning be about 30 to 35 percent of our overall lift. Correspondingly, imports have increased by 50 percent from Asia to the United States, with the bulk of them coming from China.

The difficulty here in normal times is that imports traditionally move to major metropolitan areas, where most of us U.S. consumers are located. Exports emanate from rural America. So how we square that circle, how we can create round trip, and what we call in the industry triangulated economics, are really the formula that has to be cracked here.

Mr. GIBBS. OK. The reason I was asking this, I am kind of pursuing—on our first panel, two of my colleagues were proposing—are drafting a bill, and I have a little bit of heartburn because I don't—I have a concern that the past legislation that mandates to shippers that you have to take cargo or you don't, or whatever, that kind of goes against, you know, our fundamental principles. But, obviously, there is an issue here.

So I am trying to figure out a way—how you either incentivize shippers through price to make this work without mandates, because I have a problem with that. And obviously, we have questions on more transparency, and data transparency, and more information, whether our systems, logistically, are set up enough to do that. We have got to improve that. And so that is where I was kind of going on this.

So I guess, back to Mr. Butler, carriers, obviously, they make their money by making trips back and forth across the Pacific. What incentives or what things would you think would help this issue without penalizing them too badly, especially with the possibility of a cloud hanging over them, that there could be legislation that might not be favorable to their operations?

Mr. BUTLER. Well, Congressman, first, I agree, there are real problems when you start talking about mandating to carry this particular product or that particular product. You are pretty quickly, frankly, into rate regulation and price mandates, because none of this operates independently of the economics.

I think some of the things that have been raised today, operationally, are probably where we need to go, where our shipper colleagues and others on the hearing have mentioned the need for better information, and more timely information, and I think that is something that both ocean carriers and others in the supply chain can do better, because if we tell somebody to be at a certain place at a certain time to put their cargo on the ship, and then you can't handle it, for whatever reason, that causes a real problem.

So I think we should be looking at those operational issues, and encouraging everyone to have better communications, frankly. A lot of it comes down to that.

Mr. GIBBS. Mr. Seroka, I do want to ask the question about hours of operation at your port. What are the hours of operation?

Mr. SEROKA. We run, traditionally, nine shifts of work per week at the Port of Los Angeles, Monday through Friday, 8 to 5; Monday through Thursday evening, 6 p.m. to 3 a.m. During the surge, and even predating COVID-19, many of our terminal operators ran Saturday and Sunday gates, additional nighttime gates, in an attempt to keep up with volume. That work is necessary, not only based on sheer volume, but also to connect the other nodes of the supply chain.

As was stated earlier, truckers have federally mandated hours of service. Warehouses are open for certain hours during the course of time, and our western railroads run 24/7. So syncing all of those up are very important.

But also today, Congressman, 30 percent of our truck appointments go unused on our nightside shifts. It is our job, collectively as industry, to squeeze every hour of productivity that we can offer to our customers.

Mr. GIBBS. I got to conclude here, I am out of time, but I would think on the—I understand the intermodal questions on trucking and rail and all that, but when it is unloading and loading containerships, vessels, I would think that would be a 24/7 operation. But maybe—I guess it is not at L.A. Is that what you are saying?

Mr. SEROKA. It is not, because there is only so much space.

Mr. GIBBS. OK.

Mr. SEROKA. And as I mentioned in my comments, we are full well over capacity, still to this day. When the next ship comes in, sir, there is no room to put the cargo. We have implored, and in some cases encouraged our importers to get the cargo out of the port, and push it through the supply chain. That is very important to us.

Mr. GIBBS. OK, that's very helpful, thank you. I yield back.

Mr. CARBAJAL. Thank you. We will now move on to Representative Auchincloss, and the vice chair of the subcommittee.

Mr. AUCHINCLOSS. Thank you, Mr. Chair, and I appreciate the time and expertise our witnesses have provided.

As we debate in Congress the big, ambitious infrastructure investments that we can make to create a more prosperous and more inclusive and more productive economy going forward, I wanted to ask a couple of questions about maritime infrastructure to our assembled experts here. I know that volume growth has especially impacted our west coast ports, and we are seeing them really kind of bulging at the seams.

I represent Massachusetts and, in my research for this hearing, talked to a number of experts who have pointed out that while, of course, the water route from Asia Pacific to the east coast is longer, it can be more economical to ship goods to the east coast ports if it shortens the overland routes. And up to two-thirds of the American consumer market can be reached quicker overland from east coast ports than from west coast ports, for example. So, while the total overwater shipping may be longer, the total shipping costs might be substantially lower, if you are able to dock at east coast ports. This is especially, I think, salient now that the Panama Canal has been widened for the bigger containerships.

So I would like to start with Mr. Butler, but anybody can weigh in here, in helping me think about, for east coast port infrastructure, what are some improvements that would make these ports better able to handle incoming cargo. And I will list out a few that we have explored: on-dock rail transfer; inland ports to take away some of the pressure at the actual gate; interchanges, or exits and roads that improve egress and ingress; additional container terminal automation; new terminals—I think Charleston was the first new one in 12 years that we have had on the east coast; and then dredging, as well, to accommodate larger container vessels. And I am sure there are others that I am missing here.

I would love to hear your thoughts—and others on this panel—about what infrastructure improvements east coast ports can do to attract more cargo.

Mr. BUTLER. Congressman, it is a great question, because it puts the emphasis where it really needs to be, which is on the whole system. Frankly, the five or six ideas that you have listed would probably be the top of my list, as well. So I am not sure I can improve much on that.

But just to, if you will, reinforce your thinking—and Mr. Seroka knows this, perhaps painfully—there has been, with the widening of the Panama Canal, a shifting of some cargo that would ordinarily come over the west coast to east coast ports. And so we have seen that happen, and we have seen east coast ports, frankly, expand and respond to that demand.

So I think this is something that you will see more of. And I think having multiple gateways with that kind of capacity can only help when we see surges in the future, because we will.

Mr. AUCHINCLOSS. Mr. Seroka, I want to give you a chance to weigh in, as well.

Mr. SEROKA. Yes, Congressman, a great outline that you just gave, and Mr. Butler's response, as well. But I will have you know that, in the last 10 years, the Federal Government has out-invested the west coast ports by a number of 10 to 1, nearly 11 billion U.S. dollars invested in east and gulf coast ports, versus a little more than \$1 billion on the west coast.

An applied approach, as we talk about infrastructure, that has a better balanced investment across these gateways would be my recommendation.

But your other outlines are very important. The densification of rail, the ability to move from ship to that rail to the inland point destination is important, as well. And the overall look at cost is something that we in the industry take full view of on a regular basis. And while transits to the east coast of the United States may be some 10 to 14 days longer, if there are bottlenecks in the supply chain, it gums up the whole works.

So to have our ports fluid is extremely important, no matter what the coast, so it gives the cargo owners choice of gateways in the United States.

Mr. AUCHINCLOSS. I appreciate that.

And Mr. Chair, I will yield back the balance of my time.

Mr. CARBAJAL. Thank you. We will now move on to Representative Johnson.

Mr. PONCE DE LEON. Mr. Chairman?

Mr. JOHNSON OF SOUTH DAKOTA. Oh, sorry, Mr. Ponce De Leon, did you have something before my time began?

Mr. PONCE DE LEON. To Chairman Carbajal, if I may respond to the last speaker's questions regarding a couple things that he mentioned.

Mr. CARBAJAL. We usually don't do this, but we will make an exception, Mr. Ponce De Leon.

Mr. PONCE DE LEON. Well, thank you. I mean, we are talking about the movement of cargo to the west coast and the inland transit to the east coast.

You know, typically, you are looking at 22 days of transit through the canal, all the way to the east coast. If you are coming to Los Angeles, it is a 14-day transit on water, and 4 days into Chicago, another 3 days into the east coast ports. And it is typically a more viable solution, and it is a cheaper solution. However, with the problems in the rails, and the availability of rails, and the railroad taking the advantage on increasing their prices because of the pandemic, and because of this stuff, it has created a problem, where individuals are looking for other sources, and not just a ship to the west coast.

There are a whole lot of ships coming to the west coast because it is quicker, and it has always been quicker with inland transit. And that is a fact, whether it is in Los Angeles, San Francisco, or Seattle-Tacoma.

The other part about automation that you bring up is that automation is a vehicle to improve capacity is a farce. And we have seen it in our—it doesn't improve capacity. All it does is it is a cost-saving measure to reduce labor. And that is a fact.

Mr. CARBAJAL. Thank you, Mr.——

Mr. PONCE DE LEON. You can come on down to the Port of L.A.-Long Beach, and we will show you, on the [inaudible] per hour in some of the ports, it——

Mr. CARBAJAL. Thank you, Mr. Ponce De Leon.

Mr. PONCE DE LEON. Thank you, but I needed to say that.

Mr. CARBAJAL. Thank you. Thank you. We will now move on to Representative Johnson, who was so gracious to wait.

Mr. JOHNSON OF SOUTH DAKOTA. Thank you, Mr. Chairman. I will start with Ms. Sorenson.

I thought you did a good job, ma'am, of outlining for some of us some of the impacts, economically, to pork producers, and the broader pork industry. You mentioned specifically us being viewed as an unreliable trade partner, and then specifically the southeastern businesses, and consumers maybe purchasing American pork, if they view us as unreliable, they may go find other sources for their pork.

Do you have any sense of how ripe those two issues are?

I mean, on a scale from 1 to 10, 10 being the damage is currently being done, contracts being canceled, and 1 being people are only beginning to get a sense of concern, how ripe you think those concerns are?

Ms. SORENSON. Well, I would be remiss if I didn't say 10. But, you know, last year exports added almost \$60 to the average price producers received for every U.S. hog marketed. And two problems arise when we are only able to sell frozen, and not fresh pork,

which is what Japan loves, and Japan loves our loins. And it is really hard to find a buyer for pork loins, if you can believe it. But they love them, and they love them chilled.

And so farmers would get less value for the hog if our market in Japan started to erode. This is especially difficult after struggling over the few years with tariffs and nontariff barriers to many of our important markets, so that has affected the price of our product. And then—

Mr. JOHNSON OF SOUTH DAKOTA. Ms. Sorenson, how much of a discount—I mean, just give us a ballpark. And obviously, production ag is an incredibly tight-margined business, and even in good times that can be the case. When you go from chilled to frozen, what kind of a discount does that impose?

Ms. SORENSON. I can't speak to the specific higher premium. That, you know, that is private information between the companies and the exporters. But if we can't deliver the product, we lose the market. And, you know, when we pulled out of TPP and didn't have access to an FTA in Japan, we saw a major retailer switch from buying U.S. pork to buying Canadian pork. And our foreign markets are extremely competitive with Brazil and Canada and the European Union. United States needs to stay competitive in the global pork market.

Mr. JOHNSON OF SOUTH DAKOTA. OK, and then Mr. Seroka, shifting to you, because Mr. Sorenson mentioned in her testimony expanding extra gate hours, and then Mr. Ponce De Leon mentioned a willingness, at least on behalf of labor, for the extra gate hours. You seemed to indicate that physical space was the real choke point, the real limiting factor. I mean, is that the case? There is nothing that additional work hours, extra gate hours, could do to physically clear the space of ports?

Mr. SEROKA. Sir, there are a number of causals to what we see today, physical space being one. The lack of velocity of containers moving in and out of the port is second. The ability to match up all the nodes of the supply chain, as I mentioned. Drivers of trucks have specific hours of operations that are federally mandated. They need to match up with the ports' operations, as we do with the warehouse operations.

So it is all folks working together to get on a calendar that would make sense for additional hours of operation at the one node, being the port.

Mr. JOHNSON OF SOUTH DAKOTA. But just—

Mr. SEROKA. And that is something that we continue to explore, and work with other folks—

Mr. JOHNSON OF SOUTH DAKOTA. It—

Mr. SEROKA. I am sorry, sir.

Mr. JOHNSON OF SOUTH DAKOTA. It seems like when I talk to others involved with the other parts of the intermodal universe, they really view the ports as the choke point. I think your point about getting everybody synced up is good. But I mean, at some point you have got truckdrivers and you have got railroads who are kind of delivering—they are not delivering product more quickly than you can handle it. They are delivering it only as quickly as you can handle it.

So if you all are the limiting factor, is there anything that can be done to expand gate hours?

Mr. SEROKA. Yes. And number one, I would defer to Mr. Ponce De Leon. There is specific language in the collective bargaining agreement between the employers and the dockworkers that speak to how we can do that right now.

Second, the port's growth—and I mentioned earlier on in my comments that our vessel productivity, in large part due to longshore labor, is up 50 percent during this pandemic. We are welcoming 50 percent more vessels in port every day. We have eclipsed 10 million container units and 1 million for the month. Never before has that been done at a Western Hemisphere port. But we all have to have this inertia to improve in all areas.

And, as has been highlighted here today, information technology will allow us to shine a light with greater transparency. Think of it as a heat map. Where are the bottlenecks? Where can we attack them quickly? What is coming at us, so we can prepare our assets and our staffing? And flip to the other side, where the buyer of these services, the cargo owners, importers and exporters, can make choices to clear the paths in their supply chains.

Mr. JOHNSON OF SOUTH DAKOTA. Thank you very much, Mr. Chairman. I see my time has expired.

Mr. CARBAJAL. Thank you. Not seeing any more questions, I need to ask is there any more questions by the subcommittee?

Mr. JOHNSON OF SOUTH DAKOTA. Well, Mr. Chairman, if it is not too much of an imposition, could I ask a followup?

Mr. CARBAJAL. By all means.

Mr. JOHNSON OF SOUTH DAKOTA. Thank you.

I mean, I think all your comments are well said, sir. And I realize—I mean—and I know you guys know this, it is not like you need Congress to tell any of you about the strain. But the strain is very real. And I don't know whether it is a 10, like Ms. Sorenson said or not, but it is a high number, regardless of what it is. And I know that the systems are running generally well, they are handling volumes that have never before been seen in the Western Hemisphere. I don't doubt any of that.

But I do think it is going to take an extraordinary effort, something far beyond normal, to be able to chew through some of these bottlenecks. And I think, if we want America to remain competitive, and if we want to be able to meet the demands of the world for this unbelievably high-quality American food, we are really going to need everybody, you know, labor, and ports, and shippers, and carriers, and everybody to get this done.

And so I would just—and Mr. Seroka, I would, of course, give you an opportunity to respond. But I would just say, if there is any barrier that Congress can remove to allow all of you to enact that extraordinary effort, please know that we stand ready to listen to your pleas and respond, because business as usual is simply not going to get this done.

What am I missing, sir?

Mr. SEROKA. No, we understand, and we are in lockstep with you, Congressman. Again, I will put it into three major categories.

The investment in this port and infrastructure system, as was stated earlier, is both of the physical and the digital. We need

deeper involvement in our road and street connectors, also densification of rail. The technology is such now that we can not only get to our major cities by rail from the west coast of the United States, but we need to get to the secondary and tertiary cities with that on-dock rail capability.

The second is what you said. And what we call it in the industry is supply chain optimization, looking at all these opportunities, from labor to the employer, hours of operation, and how we mesh in with the truckers, the rail providers, and others. We are doing that on the ground every day. There was a time, prerecession days, where we were stuck at 8 million container units a year. Now we are piercing through 10 to 11, and we will continue to find those ways to continuously improve.

And the third piece is what I have called for, a national export policy, not regulation, not binding people down, but finding a way to get the 8 to 9 million folks back on the job, creating incentives, whether they be on the tax structure, the ability to access markets, or other means that the Federal Government holds to get our exporters in contact with their customers.

And what Jen is talking about, lastly, is extremely important, but it is a very specialized service of refrigerated containers, either chilled or frozen, that we can carve out as an industry and put an extra spotlight on to assist her constituents and members outside of the normal path of a dry container.

Lastly, it is all about round-trip economics, sir. At the end of this torrid surge in American consumer buying, we will level off as we start flying again, going to see our grandparents, going to ball games and movies. And the industry will need the American exporter.

So your timing is perfect to gear up that conversation, so we can preplan and pre-position our wares to make sure that the American exporter can rise up again.

Mr. JOHNSON OF SOUTH DAKOTA. Thank you, Mr. Chairman, I appreciate the extra time.

Mr. CARBAJAL. Thank you. Next I will recognize myself.

Mr. Seroka, if Congress were to make a significant investment in port infrastructure like that proposed in the American Jobs Plan, how would that funding be used, and how would that help alleviate situations like this in the future?

Mr. SEROKA. Well, there is a lot to like about the American Jobs Plan. With more than \$621 billion proposed for transportation, I would say the \$17 billion proposed for ports and waterways could be increased a little bit. I talk not only about Los Angeles, which has the wherewithal and resources to make most of its investment, but to really double down on how we can improve our competitiveness on the global stage. It is what I just mentioned. It is about the physical infrastructure, the rail on-dock, the rail connectors, the roadways, to be able to move cargo out more seamlessly and quicker.

Again, with 7,500 acres of property, and 43 miles of waterway, I commend the United States Congress for passing the Water Resources Development Act of 2020, back in December, which recapitulated the thought of the Harbor Maintenance Trust in allowing for donor equity, expanded uses, while not taking any money away

from smaller ports and harbors. That, we believe, should be the kick start to a broader infrastructure play.

In addition to that, the digital infrastructure that we continue to talk about has been proven here, at the Port of Los Angeles. We need a nationwide system that allows for visibility, transparency, and, more importantly, in situations like this, what we call exception management. How can we move vessels around quicker? How can we get cargo moved in and out? And, when we have an issue like we do today in Los Angeles, with 30 percent of our truck appointments going unused, we can shine a light on that immediately, move cargo to where those additional capacities lie, and move the cargo more fluidly.

In addition, there are carve-outs for electrification, broadband throughout the United States, as well as grid resiliency. All of those can be used quite well here, even with small carve-outs at the Nation's largest port.

Mr. CARBAJAL. Thank you very much.

To conclude our questions, Ms. Sorenson, in your testimony you recommend a mandate to require ocean carriers to carry your cargo. Practically, how would that work? Who would determine that rate, from your perspective?

Ms. SORENSON. I believe the Agriculture Transportation Coalition can provide a little bit more detail, but it is my understanding that the carriers are going back under that 70 to 75 percent capacity level, which has been deemed as safe. So that was my comment around, you know, when the carriers go back filled with ag exports, fill them to what has been deemed as the safe capacity level of 70 to 75 percent.

Mr. CARBAJAL. Thank you very much. I am going to work on that issue with Ranking Member Gibbs. I think he has some innovative concepts that we can explore. So I look forward to working with Representative Gibbs on that issue. Thank you.

In closing, that concludes our hearing for today. I want to thank all the witnesses for your testimony.

I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record for today's hearing.

Without objection, so ordered.

The subcommittee stands adjourned.

[Whereupon, at 1:35 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Prepared Statement of Hon. Jefferson Van Drew, a Representative in Congress from the State of New Jersey

Good morning Mr. Maffei and Ms. Dye. Thank you for coming to testify before this committee on an issue so critical to the United States' Supply Chain Security.

Over the past year, thousands of ships have left American ports, devoid of cargo. These vessels go to China, fill up with steel, clothing, electronics, toys, you name it. They come to the West Coast of the United States, unload those cheap Chinese products, and then head back to China as quickly as they can. Once again, they leave with absolutely nothing made in America.

This phenomenon is extremely troubling. This seems symptomatic of a deep and fundamental weakness in our Supply Chain. That fundamental weakness in our Supply Chain, and really the entire global supply chain, is the exponentially increasing dependence on China.

Here are some statistics on Chinese market share, focusing just on the maritime commerce industry:

- Over the last year, China's export container volume increased by 20 percent.
- China produces 96 percent of the world's shipping containers.
- China controls nearly 50 percent of the world's shipbuilding market.

These trends, combined with the current state of the American maritime industry, presents not only an economic threat but a national security threat. As evidenced in World War II, a nation's industrial power can quickly be shifted to military production. This is particularly true of shipbuilding.

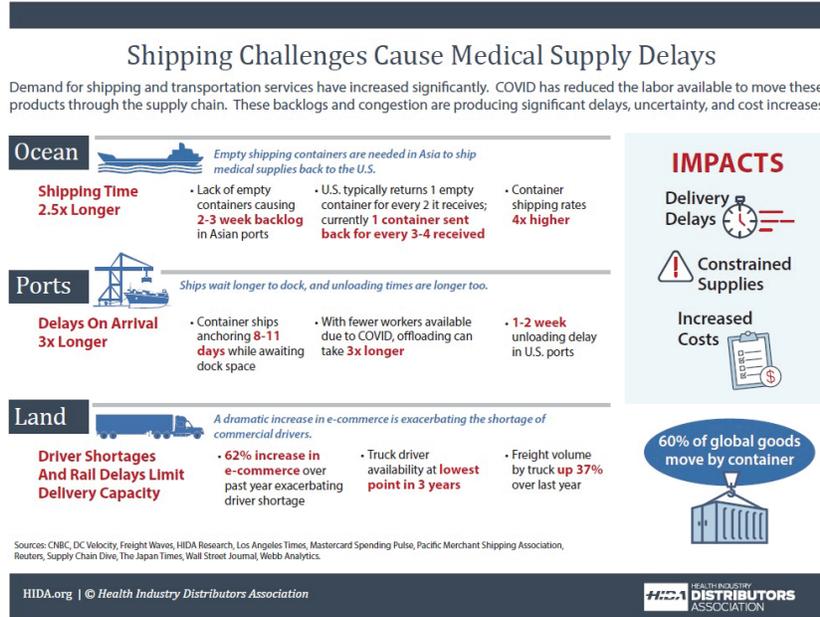
In the event of conflict with China in Taiwan or the South China Sea, the United States needs a *strong* industrial base independent of Chinese supply chains. I hope that you can explain to me how this has happened, what it means for our Country and the world, and whether we are prepared for the worst.

QUESTIONS:

- How has China established such dominance of the shipbuilding and container shipping industries?
- In what ways might China leverage its growing influence in maritime commerce to coerce the United States and our allies?
- In the event of conflict with China, is the United States' Merchant Marine and industrial shipbuilding capacity sufficient to meet the needs of a wartime economy?

Congressman Van Drew requests responses to these questions.

Chart, “Shipping Challenges Cause Medical Supply Delays,” developed by the Health Industry Distributors Association, Submitted for the Record by Hon. Bob Gibbs



Statement of Ian Jefferies, President and Chief Executive Officer, Association of American Railroads, Submitted for the Record by Hon. Bob Gibbs

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to submit this statement for the record. AAR members account for the vast majority of America’s freight railroad mileage, employees, revenue, and traffic.

Freight railroads operating in the United States are the best in the world, connecting businesses with each other across the continent and with markets overseas over a network spanning close to 140,000 miles.

There is tremendous strength and flexibility in our nation’s freight transportation systems. That said, our supply chains are facing serious challenges today. These challenges result from a variety of factors, including unforeseen, and unforeseeable, shortages of raw materials and other inputs due to past and current covid outbreaks; a largely unexpected surge in transportation demand as consumer spending moved away from services and toward goods; higher demand and limited supply in a wide variety of industries and consumer sectors; and imbalances here and abroad as economies and industries recover at different rates and supply bottlenecks form and dissipate. Railroads and all other transportation providers have felt the associated instabilities.

Another crucial factor preventing the supply chain from becoming more fluid is the limited hours and days of operation at some freight transportation customers that prevent transportation providers from “catching up” and that limit the ability of transportation customers themselves to load or unload containers, truck trailers, and railcars quickly. Major railroads are 24/7 operations, but many firms in the supply chain are not. Noel Hacegaba, the deputy executive director of administration and operations for the Port of Long Beach, recently told the Los Angeles Daily News, “Given everything we’ve experienced in the last 12 months, it’s time we take a serious look at what it will take to transition to a 24/7 supply chain.”

After falling sharply when the pandemic began in the spring of 2020, rail volumes have since rebounded. However, these rebounds have not been uniform across all

rail traffic categories. The most notable increase over the past year has been in rail intermodal. Historically, intermodal has been the fastest-growing major rail traffic category, with volumes rising from 5.6 million containers and trailers in 1990 to 9.0 million in 2000 to 11.1 million in 2010. In 2018, U.S. rail intermodal volume was a record 14.5 million units (Figure 1). Intermodal today accounts for around 25 percent of revenue for major U. S. railroads, more than any other single traffic group.



Figure 1

Because of weakness in the manufacturing sector, as well as trade disputes that disrupted global trade flows, intermodal volume began trending down in early 2019. Those declines accelerated in early 2020 when the pandemic hit, with U.S. intermodal volume falling between 12% and 17% on a year-over-year basis in March 2020 through May 2020 (Figure 2). There was a great deal of uncertainty back then regarding what would happen with the economy, but it was widely expected that intermodal volumes would stay weak for months to come because demand for transportation would stay weak.

Instead, intermodal volumes rose sharply in the summer of 2020, surpassing 2019's level by August 2020 and continuing to grow from there. Measured by weekly average volume, November 2020 broke the all-time monthly record for intermodal. That record was subsequently broken in January 2021 and again in April 2021 (Figure 3). Year-to-date intermodal volume in 2021 through May was far higher than ever before for the same period.

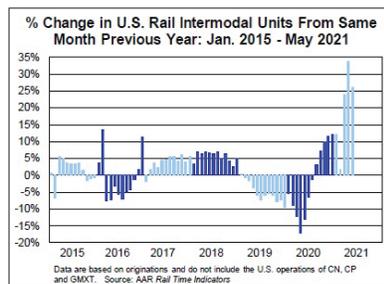


Figure 2

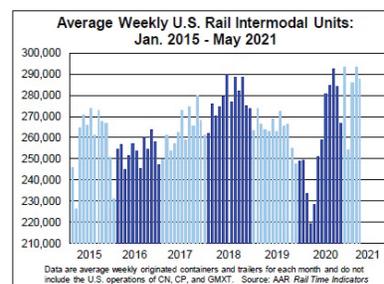


Figure 3

These significant gains in intermodal volumes parallel gains in activity at our nation's ports, which in turn are rooted in a rapid recovery in demand for consumer goods (Figure 4)—a large proportion of which are imported. Roughly half of U.S. intermodal volume consists of imports and exports, and there is a very close correlation between port volumes and U.S. intermodal volumes. As activity at ports has risen sharply since last spring, so has rail intermodal (Figure 5) and so has demand for containers.

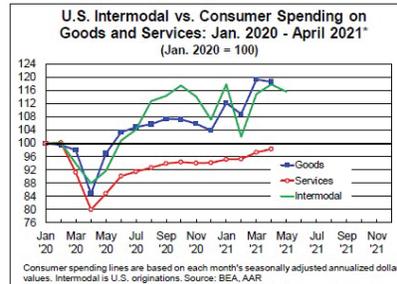


Figure 4

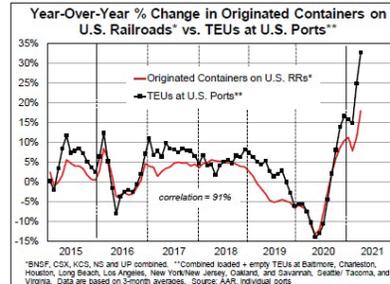


Figure 5

In aggregate, the factors discussed above have resulted in supply chain disruptions involving every part of the logistical chain.

For their part, railroads are working hard to resolve issues over which they have control. For example, railroads are working diligently to ensure they have the appropriate assets in place to handle the traffic they are called upon to haul.¹ Today, railroads are confident they have the people, equipment, and capacity in place to serve their customers' needs and are also able to adjust to meet future transportation demand, whatever the future may bring. This is largely because of the railroads' massive spending, averaging some \$25 billion per year in recent years—paid for by railroads themselves, not by taxpayers—to support railroad infrastructure and equipment.

Some rail critics mistakenly argue that railroads brought problems onto themselves by shedding too much track, equipment, and workers. It is true that over the past few years, rail employment and active locomotive counts have fallen. This is partly due to reduced traffic levels (a result of macroeconomic and market trends that in some cases pre-date the pandemic) and partly due to railroad efforts to become as safe, reliable, and productive as possible. Virtually every firm in every industry wants and needs to make the best use of limited available resources. Higher productivity means incremental capacity gains; it frees up funds that can be used for other purposes; and it often means a lower operating cost structure that allows the firm to be competitive in more markets. More efficient operations have helped make railroads better able to confront a shifting transportation landscape and prepared them for future growth and improved customer service.

What clearly is needed is enhanced cooperation by all parties in the supply chain. Individual entities—whether steamship lines, ports, trucking firms, railroads, freight forwarders, equipment providers, transportation customers, or others—can't restore fluidity to the supply chain on their own, but working together they are far more likely to determine what actions are needed to improve supply chain performance in areas such as container availability, port congestion, cargo bottlenecks, and much else. This is not a new way of doing things for railroads: they work closely with their customers, their transportation partners, and others on an ongoing basis to understand and meet expected service needs. Railroads will continue to do this.

Policymakers can help make sure the necessary conversations take place, help remove impediments to effective solutions, and encourage the use of emerging technologies to enhance safety and operational effectiveness. Freight railroads have always been at the forefront in the use of new technologies and are eager to expand their use to improve overall safety, efficiency, and the fluidity of their operations.

To conclude, the freight supply chain is a complex, interconnected system of ports, roadways, railroads, waterways, and shipper and receiver facilities. Railroads and other transportation providers rely on all parts of this supply chain to deliver freight safely, efficiently, and when expected.

America's freight railroads are an indispensable part of this chain and are a tremendous national resource. With highway congestion becoming more acute and with public pressure growing to combat climate change, conserve fuel, and promote safety, railroads are likely to be called upon to do even more in the years ahead, given their substantial advantages in these areas over other transportation modes. And

¹This goal is made more difficult to achieve when extraordinary events occur. The nature of railroading is such that bad weather—like the severe winter storms that struck the Southwest and elsewhere in February of this year—and many other events can and do inhibit railroads' ability to function effectively for days, weeks, or, in the worst cases, even months.

as our economy evolves, railroads will continue to be called upon to make additional investments in their networks to provide the safe, efficient, reliable, and cost-effective freight transportation service that their customers, and our nation, need to prosper. Put another way, railroads are prepared to continue doing their part to deliver freight upon which their customers and the country depend.

For that to happen, members of this committee and others must craft appropriate policies. Freight railroad stand ready to work with you and others to ensure that our nation's transportation needs are met in a safe, responsible and environmentally sound manner.

Statement of Julie Anna Potts, President and Chief Executive Officer, North American Meat Institute, Submitted for the Record by Hon. Bob Gibbs

On behalf of the North American Meat Institute (NAMI or the Meat Institute), based in Washington, DC, thank you for the opportunity to testify regarding the ongoing challenges confronting our members, and the broader agriculture sector, at U.S. ports. The Meat Institute is the United States' oldest and largest trade association representing packers and processors of beef, pork, lamb, veal, turkey, and processed meat products. NAMI member companies account for more than 95 percent of red meat output and 70 percent of turkey production in the U.S. The Meat Institute provides legislative, regulatory, international affairs, public relations, technical, scientific, and educational services to the meat and poultry packing and processing industry.

An efficient, dependable transportation network has always been essential to America's agricultural economy. Over the past year, however, America's ports, a critical part in that network, have experienced increasing pressure caused by a myriad of factors that have hampered U.S. agricultural trade with devastating consequences for farmers, ranchers, truckers, manufacturers, food industry workers, and rural communities. In addition to contending with perennial challenges, including delays and congestion at many U.S. marine terminals, U.S. agricultural importers, exporters, truckers, and producers have experienced the near-constant predatory and unreasonable behavior of vessel-operating common carriers (called common carriers or ocean carriers from this point forward). This behavior has exacerbated existing delays and congestion concerns, and has gone largely unchecked, with no sign of abating.

Perhaps the most egregious action perpetrated by ocean carriers is their growing proclivity to decline to carry U.S. agricultural commodity exports, including meat and poultry exports, instead choosing to hasten empty containers to Asian markets to fill them with more lucrative consumer goods to export to the U.S. In some instances, common carriers are collecting freight rates as high as \$12,000 per container to carry cargo from Asia to the U.S., while containers carrying U.S. agriculture exports earn only \$1,800. Typically, containers filled with imported goods are unloaded, sent to rural areas in the U.S. to receive agricultural commodities, and shipped to foreign export markets. By electing to send empty containers back to their points of origin rather than carry U.S. exports, ocean carriers are wielding enormous power in dictating which cargo is carried, to the disadvantage of U.S. agriculture, and are inflating freight rates. To make matters worse, U.S. exporters must rely on fewer than a dozen foreign-owned carriers to deliver our agricultural products to overseas customers. Because these carriers face few consequences for their actions, many appear impervious to U.S. oversight.

Failure to hold these carriers accountable could have long-lasting, detrimental effects for the trade-dependent U.S. meat and poultry industry and agriculture sector. For instance, the U.S. Department of Agriculture estimates that the \$141.6 billion in U.S. agricultural export value 2019 (the last data set available) generated an additional \$160 billion in economic activity for a total of \$301.6 billion in economic output. Agricultural exports also supported 1.96 million full-time civilian jobs, including 604,000 jobs in the nonfarm sector.

The U.S. meat and poultry industry, meanwhile, is the economic engine powering the agriculture sector, accounting for \$1.02 trillion in total economic output or 5.6 percent of gross domestic product, according to an economic impact analysis conducted by John Dunham & Associates. The meat and poultry industry is directly or indirectly responsible for 5.4 million jobs and \$257 billion in wages, the report found. The domestic U.S. meat and poultry industry's long-term economic viability depends on robust international trade, particularly as domestic per capita consumption of meat and poultry remains relatively stable.

However, as the data reveal, if current ocean carrier practices persist, and are not subject to oversight, then the U.S. meat and poultry industry, its workers, and the communities it supports will struggle to access these vital markets cultivated over decades. This threat is particularly concerning because Asia accounts for a significant portion of U.S. meat and poultry trade, with China, Japan, and Korea among the top markets for both beef and pork annually. The U.S. meat and poultry industry has earned the reputation of being a reliable supplier of safe, high-quality products to these export markets. But the European Union, Australia, and countries in South America are ready to fill the void left by the U.S.'s absence—an absence resulting directly from ocean carriers' nefarious actions. Once foreign competitors seize previously held U.S. market share, it becomes increasingly difficult, if not impossible, to recapture the same level of hard-earned access.

The U.S. meat and poultry industry counts on these markets to send products that otherwise would not be consumed, or would be consumed in extremely low quantities, by Americans. As a result, the U.S. domestic market would not easily absorb these products, placing undue economic pressure on livestock producers, packers, and processors, and the communities they support. Moreover, it would be cost prohibitive for many of these businesses to reengineer supply chains or to find alternative buyers to fulfill overseas contracts. Continued port disruptions could also undermine the U.S.'s food supply, which relies on imports to fill gaps in U.S. production. This would inevitably curtail consumer choice.

Because meat and poultry exports are perishable, with a relatively short shelf-life in the case of chilled meat products, the decision by ocean carriers to cancel export bookings or bypass carrying U.S. agriculture products altogether is particularly consequential. These exports cannot withstand extensive disruptions or delays, and should not be forced to if there is sufficient space available on a vessel. Yet, often ocean carriers are departing U.S. ports with vessels loaded at less than 50 percent capacity—a stark contrast to the near 100 percent capacity observed on vessels making the journey to the U.S. These cancellations and delays are costing U.S. meat and poultry companies millions, as they are forced to downgrade, discard, or divert product in the case of exports, and source from non-traditional suppliers at extremely high prices in the case of imports.

Those costs are compounded by excessive and unreasonable detention and demurrage fees assessed on U.S. importers and exporters by ocean carriers and marine terminal operators for the failure of these importers and exporters to either retrieve a container from a marine terminal or return one within a specified amount of time. The Federal Maritime Commission (FMC) has found that ocean carriers and marine terminal operators regularly issue these costly penalties even if delays in retrieving or returning containers are beyond the control of the importer or exporter. Although the FMC has deemed such charges to be “unreasonable,” and in violation of the Shipping Act, ocean carriers and marine terminal operators have faced few, if any, consequences for imposing these exorbitant, punitive costs. The Meat Institute, along with many of its counterparts in the agriculture sector, supported FMC's investigation Fact Finding No. 29, “International Ocean Transportation Supply Chain Engagement,” to address ocean carriers' predatory or unreasonable behavior, and its attendant Interpretive Rule setting forth guidelines for detention and demurrage. It is now essential that FMC be granted the proper authority to enforce this rule and stem the practices it identified that continue to hamper U.S. agricultural trade.

Taken together, the costs outlined in this testimony have forced smaller businesses that rely on trade, both imports and exports, to shutter, and have cost the U.S. agriculture sector more than \$1.5 billion in lost revenue. In the process, jobs have been lost, wages depressed, and communities gutted. As the U.S. emerges from the economic hardship inflicted by the COVID-19 pandemic, our farmers, ranchers, agricultural producers, manufacturers, and food industry workers need functioning ports, and the access to export markets and critical inputs they afford.

NAMI appreciates the attention this issue has garnered in Congress, including the strong bipartisan support for a resolution to many of the concerns described in this testimony. More urgent action is necessary to ensure the continued competitiveness of U.S. agriculture exports abroad and to preserve the jobs of millions of hard-working Americans employed by the trade-dependent agriculture sector and meat and poultry industry. The ambiguity of FMC's authority to apply enforcement measures in response to abusive ocean carrier practices has only accelerated the carriers' exploitative behavior. Granting the FMC explicit statutory authority to enforce its detention and demurrage rule could help stem future abuses. American importers and exporters would also benefit from efforts to shift the burden of proof to carriers and terminals to confirm detention and demurrage charges comply with FMC's rule. It is equally important to prevent ocean carriers from declining export cargo bookings if such cargo can be safely loaded on vessels in an appropriate timeframe; the

fate of U.S. agriculture exports should not solely be determined by carriers. Addressing this crisis not only involves holding ocean carriers accountable for their actions, it also requires improving port efficiencies, including expanding the hours U.S. marine terminals operate and ensuring an adequate supply of labor to staff the additional gate hours. The Meat Institute is ready to work with members of Congress on solutions to these concerns.

Thank you again for the opportunity to provide this testimony.

Letter of May 18, 2021, from Eric R. Byer, President and Chief Executive Officer, National Association of Chemical Distributors, Submitted for the Record by Hon. Bob Gibbs

MAY 18, 2021.

Commissioner REBECCA DYE,
Federal Maritime Commission,
 800 North Capitol Street, N.W., Washington, DC 20573.

DEAR COMMISSIONER DYE:

I am writing on behalf of the National Association of Chemical Distributors (NACD) regarding the ongoing, time-consuming, and expensive shipping challenges our members are facing in both importing and exporting products critical to the U.S. and world economies. NACD requests the Federal Maritime Commission (FMC) to utilize its full authority to take immediate and definitive actions to address this dire situation.

NACD appreciates the Commission's attention and focus on the shipping crisis in both Fact Finding 28 and the current Fact Finding 29 and believes many of the findings in "29" will be similar to those of "28," if not further exacerbated by the COVID-19 pandemic and other challenges. We look forward to seeing those results. More importantly, we expect the FMC and other governmental bodies, including Congress, the Surface Transportation Board (STB), and other federal agencies, to address the results with quantifiable actions that not only provide data, but also take quantifiable enforcement actions to support the many businesses, both small and large, that import and export and keep our economy competitive in the global marketplace.

After hearing of continued concerning reports from NACD members, we conducted a survey to provide clear data on the challenges chemical distributors are facing. Because of port congestion, container shortages, and soaring costs, inventories of chemicals have been falling to their lowest levels since the great recession, which has led to shortages, particularly of those chemicals imported via the West Coast. This includes integral chemicals no longer produced in this country but critical to U.S. consumers. At the time of our survey in late March, 83.7 percent of respondents were experiencing average delays of 11 days or more, and that number has only increased in following weeks. International shipping has become much less reliable, with delays for some shipments reported to be as much as 150 days, with the average length of the longest delays at nearly 46.5 days.

To provide an example, one NACD member was shipping product from Shanghai to Chicago. Typically, this route would take around 23 days, including 14 to reach Prince Rupert in Vancouver, Canada, followed by nine traveling by train to Chicago. However, a recent shipment of three containers on one vessel departed Shanghai January 12 but did not arrive in Vancouver until February 26. The container ship had been rerouted and sat offshore for a week before being delayed at Anchorage and Seattle. The containers did not reach Chicago until March 10, taking a full two months to reach the customer. These longer transit times and frequent delays have become common-place and have a huge ripple effect on the overall economy, with enormous cost ramifications—costs are up an average of 80.5 percent since the outbreak of COVID-19. NACD's survey also showed that 85.2 percent of our members have lost revenue as a direct result of these delays, with half of the respondents losing more than \$100,000. For small companies, this is a dire crisis that can put them out of business and make America less competitive in the global marketplace.

As another example of skyrocketing freight rates, 55.7 percent of NACD members responding to our survey said they were being charged additional "premiums" by carriers above the normal tariff or contract rates. These additional "premiums" are for service resulting in products arriving at their final destinations weeks, if not months, late.

Port infrastructure and related supply-chain processes have clearly not kept up with demand and U.S. industry's needs in a competitive global economy. We are living with a relic of the past. The FMC must step up and advocate for a more modern

supply-chain. The FMC must also work to ensure that neither the activities of ocean-liner shipping groups nor foreign government laws or regulations impose unfair costs on American exporters importers, or ultimately on American consumers of imported goods.

Over the past five decades, international ocean transportation has changed dramatically. The FMC, an independent expert agency charged with regulating liner shipping in U.S. trades, must adapt to and evolve with those changes. The FMC's responsibility is to "its mission to ensure a competitive and reliable international ocean transportation supply system that supports the U.S. economy and protects the public from unfair and deceptive practices." Shippers that are the cornerstone of our nation's economy are being asked to do and pay more for inefficiencies, not efficiencies, in this ongoing supply-chain fiasco. NACD urges the FMC to exercise your authority and take concrete action to protect American importers, exporters, and consumers from ongoing unfair and deceptive shipping practices.

We believe there is enough evidence among NACD members, as well as other shippers, to suggest that the shipping lines have taken advantage of importers and exporters, imposing unfair and exorbitant costs on those who depend on their services. This is a situation that demands the FMC investigate and take appropriate actions to protect consumers and U.S. interests.

Additionally, ocean carriers must not be allowed to dismissively and unscrupulously assess detention and demurrage charges when terminals/ports are not operating and unloading containers, are not open for business, or have considerable backlogs and delays lasting days and weeks. These indiscriminate charges should not fall on the receivers who want nothing more than to get their products efficiently unloaded, so they can transport them to their customers in a timely and more predictable and cost-effective manner. The ocean carriers are now blatantly taking advantage of U.S. businesses in the supply-chain, forcing them to pay for "premium" services that are nothing more than camouflaged late-delivery charges for something outside of their control.

In addition to these actions we believe the FMC can and should take today, NACD and its membership will encourage the Biden administration and Congress to invest dedicated infrastructure dollars wisely in intermodal freight bottlenecks, critical to both the import and export of goods to make our nation more competitive in the global marketplace.

NACD will also encourage the investment in real-time tracking of vessels to customers from ship to port, truck, and rail. Better communication and transparency are needed, as well as full utilization of the U.S. Customs and Border Protection's Automated Commercial Environment system to streamline import paperwork and processing. The administration and Congress should also support the U.S. manufacturing base for shipping containers and chassis, currently controlled by and subsidized by the Chinese government, and create incentives to encourage more people to enter into the longshoreman and related port worker trades, to include trucking, especially with a shortage of truck drivers.

Finally, but integral to these issues, NACD urges the FMC to coordinate an emergency joint meeting with the STB to address both ocean carrier and rail policies with relevant stakeholders to include shippers.

Again, we look forward to the results of your Fact Finding 29 exercise, but more importantly, NACD would appreciate the FMC moving beyond fact-finding to advancing solutions that protect our U.S.-based importers and exporters—the businesses that are the backbone to our economy and make America most-competitive in the global marketplace.

Regards,

ERIC R. BYER,

President and CEO, National Association of Chemical Distributors.

CC: FMC Chairman, Daniel B. Maffei
 Commissioner Carl W. Bentzel
 Commissioner Michael A. Khouri
 Commissioner Louis E. Sola
 Surface Transportation Board (STB)

**Article entitled, “What Do Agriculture Exporters Need From Congress?”
Journal of Commerce, June 13, 2021, by Peter Friedmann, Executive Director, Agriculture Transportation Coalition (AgTC), Submitted for the Record by Hon. Bob Gibbs**

WHAT DO AGRICULTURE EXPORTERS NEED FROM CONGRESS?

Journal of Commerce, June 13, 2021

by Peter Friedmann, Executive Director, Agriculture Transportation Coalition (AgTC)

https://www.joc.com/maritime-news/container-lines/what-do-agriculture-exporters-need-shipping-industry_20210613.html

Twenty-two percent of US ag exports that could be shipped, are not being shipped due to container shipping restraints, according to AgTC.

Following are two highest priorities of US agriculture exporters. Currently shippers are pursuing congressional mandate (legislation), including AgTC’s own proposals described below. However, if ocean carriers are genuinely interested in addressing these, the door is open—we invite ocean carriers to sit down with ag exporters, to find solutions. But time is running short.

Detention and Demurrage: Shippers (exporters and importers) are reluctant to file complaints, for good reason—do you really want to start a legal action against a carrier, when you desperately need a booking from that carrier, a container, space on the ship? It’s not difficult to understand why virtually no complaints have been filed, even after the Federal Maritime Commission (FMC) issued a very good rule setting standards for demurrage and detention charges. And the complaint process at the FMC, as at the Surface Transportation Board, is neither quick or inexpensive, and requires lawyers. So the aim of the AgTC proposal is to reduce the number of detention and demurrage charges, without the need to file a complaint at the FMC—better for shippers, worse for lawyers. The AgTC proposal would incentivize carriers to “self-police”—to confirm (“certify”) for themselves and the shipper, before imposing a detention or demurrage charge, that it complies with the FMC Rule. In other words, the burden of compliance would be on the carriers who issue the charges, not on the shipper or trucker which receives them. By requiring the certification to be given to the shipper along with the charge, the burden shifts to the carriers—they would simply issue fewer detention/demurrage charges. While the AgTC proposal facilitates FMC enforcement (by holding carriers to their certifications, with substantial penalties if they have deviated) we feel a far more important role of this provision would be to dramatically reduce the frequency of detention and demurrage charges in the first place, and thus the need for complaints and enforcement actions.

Carriage of export cargo. A top priority of the AgTC. Can the government regulate carriers to carry more exports? Yes. The US has a long history of regulating private transportation companies to serve the public interest—airlines, railroads for examples. So it’s consistent that the FMC assure that ocean carriers carry US export cargo, it’s even one of the stated purposes of the Shipping Act. The economic incentive of carriers to decline to carry our export cargo in favor of taking containers back to Asia empty, in order to gain additional loaded import voyages, at much higher freight rate revenue, is obvious. But the Shipping Act (as well as aviation and rail laws) exist to balance between carriers’ desire to maximize revenue, and what is in the public interest. Over 150 Members of Congress and several FMC Commissioners have emphatically stated that carrying our exports is in the public interest.

Our proposed legislation would mandate that carriers take export shipments if they can be carried safely, on ships scheduled for the export destination. Enforcement would require the FMC undertake a very different role than it has, since the Shipping Act of 1916. It would not wait for a complaint to be filed, but rather, self-initiate. Frankly, everyone—port directors, longshore labor, truckers, terminal operators—can attest to the large numbers of empty containers being loaded, even while exporters’ bookings are being denied or cancelled. In fact, carriers have been honest, either publicly stating policies to decline export bookings in order to expedite the return of containers to Asia, or informing shippers individually when declining or cancelling export cargo bookings. Once FMC investigators confirm this is happening, that the cargo could be safely and timely loaded and carried on vessels scheduled for that cargo’s destination, the Commission could initiate enforcement. No doubt, this is an entirely new approach and function for the FMC, but urgently needed as our informal surveys of ag exporters find that about 22 percent of US ag exports that could be shipped, are not—for some companies the number is lower, for others

it is higher. It is devastating for some companies, terrible for our economy. Getting more export cargo on the ships is a top priority for AgTC.

Mandate or collaboration?

As shippers pursue Congressional intervention, including AgTC's own proposals, the door is still open. If ocean carriers are genuinely interested in addressing the detention/demurrage charges and export carriage, the door is open—we invite ocean carriers to sit down with us, to find solutions. Time is running short.

Peter Friedmann, executive director, Agriculture Transportation Coalition (AgTC), can be reached at executivedirector@agtrans.org

“Proposed Legislation to Address Ocean Shipping Crisis,” offered by the Agriculture Transportation Coalition, Submitted for the Record by Hon. Bob Gibbs

[Witness Alexis Jacobson, testifying on behalf of the Agriculture Transportation Coalition et al., included this proposed legislation as attachment 1 in her written testimony. See pages 49–51.]

“Overview: The Current Ocean Export Crisis,” offered by the Agriculture Transportation Coalition, Submitted for the Record by Hon. Bob Gibbs

[Witness Alexis Jacobson, testifying on behalf of the Agriculture Transportation Coalition et al., included this overview as attachment 2 in her written testimony. See pages 52–53.]

Letter of April 27, 2021, from the Agriculture Transportation Coalition et al., Submitted for the Record by Hon. Bob Gibbs

APRIL 27, 2021.

The Honorable PETE BUTTIGIEG,
*United States Secretary of Transportation,
 1200 New Jersey Avenue, SE, Washington, DC 20590.*

DEAR SECRETARY BUTTIGIEG:

We are concerned with challenges imposed by vessel-operating common carriers (VOCCs), who are declining to ship U.S. agricultural commodity exports from U.S. ports, and imposing hundreds of millions of dollars of punitive charges already determined to be unreasonable by the Federal Maritime Commission. The burden on hardworking exporters, manufacturers, farmers, ranchers and our rural communities is overwhelming. We urge the Department of Transportation to utilize all existing authorities to remedy the challenges experienced by U.S. agricultural exporters.

The last three decades in the ocean shipping industry have brought consolidation to a sector that once had dozens of carriers. A result of that consolidation is complete reliance on less than a dozen foreign carriers to deliver our agricultural products overseas. The tenuous nature of this arrangement is evident as VOCCs are delivering massive volumes of imported shipments to U.S. ports and then electing to leave without refilling empty containers with American goods and products.

Whereas shipping containers filled with imported goods are normally unloaded, sent to rural areas, filled with agricultural commodities and then shipped abroad, the lucrative freight rates paid by the import cargo, combined with congestion and delay at ports on our West and East Coasts are leading VOCCs to immediately return empty containers to their overseas ports of origin. The situation is exacerbated by carriers' failure to provide accurate notice to our exporters of arrival/departure and cargo loading times, and then imposing draconian financial penalties on the exporters for “missing” those loading windows—a practice that the FMC has found to be unreasonable.

Foreign markets are critical to American farmers and ranchers with more than 20 percent of agricultural production going abroad. It is cost prohibitive for producers to rework the supply chain and find alternative means of fulfilling their overseas contracts. This impossibility coupled with significant pricing increases explains estimates of nearly \$1.5 billion in lost agriculture exports. These losses come on the

heels of trade conflict and pandemic that have wiped away markets globally. The mounting frustration of U.S. agriculture explains why a vast array of food and agriculture associations supported the Federal Maritime Commission's investigation Fact Finding No. 29, "International Ocean Transportation Supply Chain Engagement", to address VOCCs predatory or unreasonable behavior, and its Rule setting forth guidelines for Detention and Demurrage.

We need action now; not additional studies. We ask the Department of Transportation to assist the Commission in expediting its enforcement options. Additionally, we urge the Department of Transportation to consider its existing authorities to determine how it can assist with the transportation needs of the U.S. exporters and the farmers and ranchers they serve, in overcoming the current challenges in shipping goods and products. Thank you for your attention to this urgent matter and for considering our views.

CC: Secretary, U.S. Department of Agriculture, Tom Vilsack

Maria Cantwell, Chair, Senate Committee on Commerce, Science and Transportation

Roger Wicker, Ranking Member

Gary Peters, Chair, Subcommittee on Surface Transportation, Maritime, Freight & Ports

Deb Fischer, Ranking Member

Peter DeFazio, Chair, House Transportation & Infrastructure Committee

Sam Graves, Ranking Member

Salud Carbajal, Chair, Subcommittee on Coast Guard & Maritime Transportation

Bob Gibbs, Ranking Member

Sincerely,

AGRICULTURE TRANSPORTATION
COALITION.

ADDTRAN LOGISTICS, INC.

ADEN BROOK AGRI SALES USA, INC.

ADM.

AG WEST.

AGRI GREEN ENT.

AGRI-MARK, INC.

AGRI-BILT BUILDING SYSTEMS.

AGRICULTURAL & FOOD TRANSPORTERS

CONFERENCE OF ATA.

ALLBRIGHT COTTON.

ALLPORTS FORWARDING INC.

ALMOND ALLIANCE OF CALIFORNIA.

AMERICAN BAKERS ASSOCIATION.

AMERICAN COTTON SHIPPERS

ASSOCIATION.

AMERICAN DAIRY PRODUCTS INSTITUTE.

AMERICAN FARM BUREAU FEDERATION.

AMERICAN FEED INDUSTRY ASSOCIATION.

AMERICAN FOREST & PAPER

ASSOCIATION.

AMERICAN LOG EXPORTERS COALITION.

AMERICAN PULSE ASSOCIATION.

AMERICAN SEED TRADE ASSOCIATION.

AMERICAN SHEEP INDUSTRY

ASSOCIATION.

ANDERSEN & SONS SHELLING.

ANDERSON HAY AND GRAIN.

ANDERSON NORTHWEST LLC.

BAINS FARMING, LP.

BARTELSON TRANSPORT.

BEECHER LANE WALNUT, INC.

BELGIOIOSO CHEESE, INC.

BELL BACON FARMS.

BLUE SUN FARMS, INC.

BORDER VALLEY TRADING.

BOSSCO TRADING LLC.

BRANDT FARMS, INC.

C K INTERNATIONAL, LTD.

CALAWAY TRADING, INC.

CALIFORNIA CITRUS MUTUAL.

CALIFORNIA COTTON GINNERS AND

GROWERS ASSOCIATION.

CALIFORNIA DAIRIES, INC.

CALIFORNIA FARM BUREAU FEDERATION.

CALIFORNIA FRESH FRUIT ASSOCIATION.

CALIFORNIA LEAGUE OF FOOD

PRODUCERS.

CALIFORNIA PRUNE BOARD.

CALIFORNIA TABLE GRAPE COMMISSION.

CALIFORNIA WALNUT COMMISSION.

CAPAY CANYON RANCH.

CARRIERE FAMILY FARMS.

CASCADE FOOTHILLS FARMLAND

ASSOCIATION.

CASCADE ORGANIC FARMS.

CASCADE ORGANIC FLOUR.

CASCADE SHIPPERS ASSOCIATION.

CASTLE SHIPPING LINES, INC.

CENTRAL WASHINGTON RAILROAD.

CHAIRMAN MADERA COUNTY BOARD OF

SUPERVISORS.

CHARLES T. CREECH INC.

CLEARFREIGHT.

CLEMENS FOOD GROUP.

COLUMBIA BASIN RAILROAD.

COLUMBIA RIVER CUSTOMS BROKERS AND

FORWARDERS ASSOCIATION.

CONSUMER BRANDS ASSOCIATION.

CORN REFINERS ASSOCIATION.

COTTON WAREHOUSE ASSOCIATION OF

AMERICA.

CRAIN MARKETING, INC.

CREEKSIDE FARMING CO.

CREST CONTAINER LINES INC.

CROLL FARMS.

CUSTOMS BROKERS & INTERNATIONAL

FREIGHT FORWARDERS ASSOCIATION OF

WASHINGTON STATE.

CUSTOMS BROKERS AND FORWARDERS
 ASSOCIATION OF NORTHERN
 CALIFORNIA.
 D&C DISTRIBUTORS.
 D&D AG SERVICES LLC.
 DAIRY FARMERS OF AMERICA.
 DAIRYAMERICA.
 DALE PACKING, INC.
 DARIGOLD.
 DART HAY.
 DAVIS HAY & STRAW.
 DAYKA & HACKETT LLC.
 DERCO FOODS.
 DIAMOND FOODS, LLC.
 DISTILLED SPIRITS COUNCIL OF THE
 UNITED STATES.
 DLF PICKSEED.
 DUNLEA FARMS LTD.
 ECKENBERG FARMS INC.
 EFI LOGISTIC INC.
 EIGHT STAR COMMODITIES.
 EL TORO EXPORT, LLC.
 EL TORO LAND AND CATTLE COMPANY.
 EXCEL INTERNATIONAL, LLC.
 FARMERS' RICE COOPERATIVE.
 FIREHORSE FARMS.
 FOODLINX, INC.
 FORAGE EXPORT TRANSPORT COMPANY.
 FORAGE EXPORTER AND DIAMOND E
 TRANSPORT.
 FORNAZOR INTERNATIONAL, INC.
 FREEBURG HAY LLC.
 FRESNO COUNTY FARM BUREAU.
 GFI HAY PROCESSING.
 GOLD DUST POTATO PROCESSORS, INC.
 GOLDEN VALLEY FARMS.
 GRAIN MILLERS INC.
 GRASSLAND DAIRY PRODUCTS, INC.
 GREENFIELD LLC.
 GRIFFIN SEED INTERNATIONAL LLC.
 GROVE SERVICES.
 GROWER DIRECT NUT COMPANY.
 HAJNY TRADING.
 HARDWOOD FEDERATION.
 HAY DAY FARMS OF ARIZONA LLC.
 HAY DAY FARMS OF CALIFORNIA LLC.
 HAZELNUT GROWERS OF OREGON.
 HEIDEL HOLLOW FARM, INC.
 HIGH DESERT MILK.
 HORIZON NUT COMPANY.
 HUGHSON NUT.
 HULBERT FARMS, INC.
 IDAHO POTATO COMMISSION.
 IDAHO PULSE CROPS COMMISSION.
 IDAHO-OREGON FRUIT AND VEGETABLE
 ASSOCIATION.
 IMC INTERMARKET Co. INC.
 INFINITY INTERMODAL.
 INLAND EMPIRE MILLING Co., INC.
 INSTITUTE OF SHORTENING AND EDIBLE
 OILS.
 INTERNATIONAL DAIRY FOODS
 ASSOCIATION.
 INTERNATIONAL EXPRESS, LLC.
 INTERNATIONAL INGREDIENT
 CORPORATION.
 J.C. JANSSEN FARM.
 JAMES FARRELL & Co.
 JASMINE VINEYARDS.
 JBF DISTRIBUTION.
 KEVIN FOX FARMS.
 KINGSBURG ORCHARDS.
 KINTETSU WORLD EXPRESS.
 L&M.
 LAND O'LAKES INC.
 LARSEN HAY.
 LEATHER & HIDE COUNCIL OF AMERICA.
 LEPRINO FOODS COMPANY.
 LINDSEY FORWARDERS, INC.
 LOS ANGELES CUSTOMS BROKERS AND
 FREIGHT FORWARDERS ASSOCIATION.
 LYONS COTTON, INC.
 MACMILLAN-PIPER.
 MADERA COUNTY FARM BUREAU.
 MARIANI NUT COMPANY.
 MARKARIAN FAMILY LP.
 MARNER HAY & CATTLE Co.
 MARYLAND & VIRGINIA MILK PRODUCERS
 COOPERATIVE ASSOCIATION.
 MCT DAIRIES, INC.
 MEAT IMPORT COUNCIL OF AMERICA.
 METAFOODS LLC.
 MICHIGAN MILK PRODUCERS
 ASSOCIATION.
 MIDWAY STRAW COMPANY LLC.
 MILK SPECIALTIES GLOBAL.
 MOHAWK TRADING Co., INC.
 MONTANA PULSE CROPS COMMITTEE.
 MONTEREY COUNTY FARM BUREAU.
 MULTI FRUIT USA.
 NATIONAL AQUACULTURE ASSOCIATION.
 NATIONAL ASSOCIATION OF EGG
 FARMERS.
 NATIONAL ASSOCIATION OF STATE
 DEPARTMENTS OF AGRICULTURE.
 NATIONAL BEEF PACKING COMPANY.
 NATIONAL CHICKEN COUNCIL.
 NATIONAL COTTON COUNCIL.
 NATIONAL COUNCIL OF FARMER
 COOPERATIVES.
 NATIONAL FISHERIES INSTITUTE.
 NATIONAL MILK PRODUCERS
 FEDERATION.
 NATIONAL OILSEED PROCESSORS
 ASSOCIATION.
 NATIONAL ONION ASSOCIATION.
 NATIONAL PORK PRODUCERS COUNCIL.
 NATIONAL POTATO COUNCIL.
 NATIONAL RAISIN COMPANY.
 NATIONAL SORGHUM PRODUCERS.
 NATIONAL TURKEY FEDERATION.
 NEIGEL VINTNERS LLC.
 NORSEMAN INC.
 NORTH AMERICAN BLUEBERRY COUNCIL.
 NORTH AMERICAN MEAT INSTITUTE.
 NORTH AMERICAN MILLERS'
 ASSOCIATION.
 NORTH AMERICAN RENDERERS
 ASSOCIATION.
 NORTH DAKOTA DRY PEA AND LENTIL
 COUNCIL.
 NORTH DAKOTA GRAIN GROWERS
 ASSOCIATION.

NORTHEAST DAIRY FARMERS
 COOPERATIVES.
 NORTHERN CALIFORNIA DISTRICT EXPORT
 COUNCIL.
 NORTHERN PULSE GROWERS
 ASSOCIATION.
 NORTHPOINT LOGISTIC.
 NORTHWEST HORTICULTURAL COUNCIL.
 NUGGET INTERNATIONAL INC.
 NUMBER 9 HAY TRADING Co. LLC.
 NuPHY, INC.
 O-AT-KA MILK PRODUCTS COOPERATIVE,
 INC.
 OBI SEAFOODS, LLC.
 OHIO DAIRY PRODUCERS ASSOCIATION.
 OL-USA.
 OLAM COTTON.
 OLIVE GLEN ORCHARDS.
 ONTARIO DEHY INC.
 OREGON HAY.
 OXBOW ANIMAL HEALTH.
 P-R FARMS, INC.
 PACIFIC NORTHWEST ASIA SHIPPERS
 ASSOCIATION.
 PACIFIC SOYBEAN & GRAIN.
 PACIFIC VALLEY FOODS, INC.
 PANDOL BROS., INC.
 PAUL PRICE FARMS.
 PEARL CROP.
 PET FOOD INSTITUTE.
 POLYEXCEL.
 POPPELREITER FARMS.
 PRODUCE MARKETING ASSOCIATION.
 PROTEUS COMMODITIES INC.
 PURIS.
 PURNELL FARMS.
 QUALITY TRADING COMPANY, LLC.
 RANDI B FARMS.
 RAY-MONT LOGISTICS AMERICA INC.
 RB INTERNATIONAL.
 RURAL & AGRICULTURE COUNCIL OF
 AMERICA.
 S.A. INTERNATIONAL, INC.
 SACRAMENTO PACKING, INC.
 SAGE HILL NW.
 SALIDA VALLEY RANCH.
 SAN DIEGO CUSTOMS BROKERS
 ASSOCIATION.
 SARTORI COMPANY.
 SB&B FOODS, LLC.
 SHOEI FOODS USA, INC.
 SKAGIT SEED SERVICES, INC.
 SMITH SEED SERVICES.
 SOUTH DAKOTA PULSE GROWERS ASSN.
 SOUTHEAST MILK, INC.
 SOUTHWEST COUNCIL OF AGRIBUSINESS.
 SPECIALTY SOYA & GRAINS ALLIANCE.
 STANDLEE PREMIUM WESTERN FORAGE.
 STEFFEN HAY INC.
 STEVENS HAY EXPORTS.
 STEWART & JASPER MARKETING, INC.
 STUTZMAN FARMS INC.
 SUNNYGEM LLC.
 SUNRISE ACRES EGG FARM.
 SUNRISE TRADING.
 SUNSWEET.
 SUPERIOR FARMS.
 TENCATE GEOSYNTHETICS AMERICAS.
 TERRA NOVA TRADING, INC.
 TGS LOGISTICS.
 THE CALAWAY GROUP OF COMPANIES.
 THE FERTILIZER INSTITUTE.
 THE GAVILON GROUP, LLC.
 THE PACIFIC COAST COUNCIL OF
 CUSTOMS BROKERS AND FREIGHT
 FORWARDERS ASSNS. INC.
 THE PROPELLER CLUB OF NORTHERN
 CALIFORNIA.
 TOYO COTTON COMPANY.
 TRIPLE I PRESS.
 TTS—WORLDWIDE.
 TURLEY COTTON Co., INC.
 TYSON FOODS, INC.
 U.S. DAIRY EXPORT COUNCIL.
 U.S. FORAGE EXPORT COUNCIL.
 U.S. MEAT EXPORT FEDERATION.
 U.S. PEA & LENTIL TRADE ASSOCIATION.
 U.S. SHIPPERS ASSOCIATION.
 UNITED EGG PRODUCERS.
 UNITED STATES EGG MARKETERS, INC.
 UPSTATE NIAGARA COOPERATIVE, INC.
 US APPLE EXPORT COUNCIL.
 US NISSHIN SHOKAI.
 USA DRY PEA AND LENTIL COUNCIL.
 USA POULTRY & EGG EXPORT COUNCIL.
 USA RICE.
 VALLEY VIEW FOODS, INC.
 VALLEY WORLDWIDE LOGISTICS
 SOLUTIONS.
 WARD RUGH, INC.
 WARKENTIN FARMS LLC.
 WASHINGTON GRAIN COMMISSION.
 WASHINGTON PULSE CROPS COMMISSION.
 WASHINGTON STATE POTATO
 COMMISSION.
 WASHINGTON STATE SHORT LINE
 RAILROAD COALITION.
 WASHINGTON STATE TREE FRUIT
 ASSOCIATION.
 WEFARM ORGANICS.
 WESTERN AG ENTERPRISES, INC.
 WESTERN AGRICULTURAL PROCESSORS
 ASSOCIATION.
 WESTERN GROWERS ASSOCIATION.
 WESTERN NUT COMPANY.
 WESTERN PULSE GROWERS ASSOCIATION.
 WHITBY AG ENTERPRISES, LLC.
 WILBUR-ELLIS NUTRITION.
 WINDROW BALING PRODUCTS INC.
 WOODLYN ACRES FARM, LLC.
 ZEELAND FARM SERVICES, INC.
 ZEN-NOH HAY, INC.
 ZFS CRESTON, LLC.
 ZFS ITHACA, LLC.
 5 RIVERS AG.
 5G RICE PARTNERSHIP.

Letter of February 24, 2021, from the Agriculture Transportation Coalition et al., Submitted for the Record by Hon. Bob Gibbs

FEBRUARY 24, 2021.

President JOSEPH R. BIDEN,
The White House,
1600 Pennsylvania Avenue NW, Washington, DC 20500.

DEAR PRESIDENT BIDEN,

As is being widely reported, one of the great commercial challenges of the ongoing pandemic has been actions of ocean container carriers, including declining to carry our export cargo, severely injuring US agriculture, food and forestry product exporters, preventing us from delivering affordably and dependably to international markets. This is a crisis: unless the Shipping Act and other tools available to our government are applied promptly, agriculture industries will continue to suffer great financial losses; these carrier practices will render US agriculture noncompetitive for years to come.

According to their own public reports, the ocean carriers are enjoying their most profitable period in decades by controlling capacity and charging unprecedented freight rates, imposing draconian fees on our exporters and importers, and frequently refusing to carry U.S. agricultural exports.

These refusals and charges by the ocean carriers dramatically increase costs to our exporters, making foreign sales inefficient and uneconomical, rendering farmers and processors (for the first time), unreliable suppliers to the global supply chain. The international ocean container carriers which carry over 99% of our foreign commerce, are headquartered overseas—perhaps unaware of the injury their actions are causing to the US economy, as they profit from the pandemic.

The situation is so egregious that the Federal Maritime Commission (FMC) last year issued a Rule setting forth guidelines as to what would be reasonable carrier practices—however, none have been implemented by the carriers, deepening the crisis. While the FMC is undertaking further efforts to gain compliance, the damage being done to our agriculture and forest products industries is severe, increasing, and with lost foreign markets, may be irreversible.

The Shipping Act provides the FMC with the authority to prohibit unreasonable, unjust practices, and “to promote the growth and development of US exports through competitive and efficient ocean transportation ...”. Given the urgency of this situation in commerce, we ask that these tools and any others available to our government be immediately applied to stem the current ocean carrier practices that are so damaging our agriculture exports.

Sincerely,

- | | |
|--|---|
| 1. Agriculture Transportation Coalition. | 25. Harbor Trucking Association. |
| 2. African-American Farmers of California. | 26. Hardwood Federation. |
| 3. Agricultural & Food Transporters Conference of ATA (American Trucking Association). | 27. Idaho Potato Commission. |
| 4. Almond Alliance of California. | 28. Intermodal Motor Carriers Conference of ATA. |
| 5. American Farm Bureau Federation. | 29. International Association of Refrigerated Warehouses. |
| 6. American Feed Industry Association. | 30. International Dairy Foods Association. |
| 7. American Forest & Paper Association. | 31. Leather and Hide Council of America. |
| 8. American Potato Trade Alliance. | 32. Meat Import Council of America. |
| 9. American Pulse Association. | 33. National Association of Egg Farmers. |
| 10. American Seed Trade Association. | 34. National Chicken Council. |
| 11. California Cotton Ginners and Growers Association. | 35. National Cotton Council. |
| 12. California Farm Bureau Federation. | 36. National Council of Farmer Cooperatives. |
| 13. California Fresh Fruit Association. | 37. National Fisheries Institute. |
| 14. California Prune Board. | 38. National Hay Association. |
| 15. California Rice Commission. | 39. National Milk Producers Federation. |
| 16. California Trucking Association. | 40. National Onion Association. |
| 17. California Walnut Commission. | 41. National Pork Producers Council. |
| 18. Cascade Shippers Association. | 42. National Turkey Federation. |
| 19. Colorado Corn Growers Association. | 43. Nisei Farmers League. |
| 20. Consumer Brands Association. | 44. North American Meat Institute. |
| 21. Corn Refiners Association. | 45. North American Renderers Association. |
| 22. DairyAmerica Inc. | |
| 23. Dairy Farmers of America. | |
| 24. Darigold. | |

46. North Dakota Grain Growers Association.
47. Oregon Potato Commission.
48. Oregon Seed Association.
49. Pacific Coast Council of Customs Brokers & Freight Forwarders Associations.
50. Pacific Northwest Asia Shippers Association.
51. Pet Food Institute.
52. Potato Growers of Michigan, Inc.
53. Potato Growers of Washington, Inc.
54. Produce Marketing Association.
55. Specialty Crop Trade Council.
56. Specialty Soya & Grains Alliance.
57. U.S. Apple Association.
58. U.S. Dairy Export Council.
59. U.S. Meat Export Federation.
60. U.S. Pea and Lentil Trade Association.
61. United Fresh Produce Association.
62. United States Cattlemen's Association.
63. US Forage Export Council.
64. USA Dry Pea and Lentil Council.
65. USA Poultry & Egg Export Council.
66. USA Rice.
67. Washington Farm Bureau.
68. Washington State Hay Growers Association.
69. Washington State Potato Commission.
70. Western Agricultural Processors Association.
71. Western Growers Association.
72. Wine and Spirits Shippers Association.
73. Wisconsin Potato & Vegetable Growers Association.

CC: Secretary, U.S. Department of Agriculture, Tom Vilsack
 Secretary, U.S. Department of Transportation, Peter Buttigieg
 Chair, Council of Economic Advisors, Cecilia Rouse
 Chair, Federal Maritime Commission Michael Khouri

Letter of March 9, 2021, from Hon. Adrian Smith, Member of Congress et al., Submitted for the Record by Hon. Bob Gibbs

MARCH 9, 2021.

The Honorable MICHAEL A. KHOURI,
Chairman,
Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573.

DEAR CHAIRMAN KHOURI:

We are writing you today to share our mounting concern over reports that certain vessel-operating common carriers (VOCCs) are declining to ship U.S. agricultural commodity exports from our ports. These VOCCs serve as an integral link between American producers and overseas customers, without which contracts cannot be met and the ability to compete in or even access foreign markets is threatened. We appreciate the steps already taken by the Federal Maritime Commission to investigate these alarming reports and urge the Commission to resolve this matter. In the meantime, we call on the Commission to provide monthly updates to Congress until the matter is resolved.

Over the past year, American producers, exporters, and entire economic sectors have grappled with widespread delays, bottlenecks, and increasing fees at our ports. These challenges are exacerbated by reports that VOCCs are delivering shipments to U.S. ports and then electing to leave without refilling empty containers with American goods for export. Such activity constricts entire supply chains and propels trade to move only in an inbound direction. These conditions are unsustainable for exporters, put significant strain on the U.S. economy, and simply unacceptable.

The American agricultural sector, in particular, stands to be hit hard by the delays, congestion, and the reported discriminatory practices by VOCCs. With more than 20 percent of U.S. agricultural production aimed for export, reaching foreign markets is essential to American producers and the viability of our agricultural sector at large. It is cost prohibitive for producers of these agricultural commodities, particularly perishable products, to use alternative methods to fulfill overseas contracts in a dependable and affordable manner. Should it be found that VOCCs are predatory or unreasonable in refusing to export these American agricultural products or imposing unreasonable fees, they must be held accountable by the Commission for the harm they are causing our producers.

We appreciate and support Fact Finding No. 29, "International Ocean Transportation Supply Chain Engagement," launched by the Commission in March 2020, as well as its expansion in November 2020 to include reports of the practices listed above by certain VOCCs. As the nation and world grapples with the ongoing effects of the COVID-19 pandemic, it is essential that port operators and VOCCs honor

their responsibilities and adhere to the laws that govern their roles in the global economy. Continued and largely unrestricted access to American ports means trade opportunities should be reciprocal. Should the investigation reveal any wrongdoing, we urge the Commission to take appropriate enforcement actions to end such practices swiftly and decisively.

Thank you for your attention to this urgent matter and for considering our views. Time is a critical factor and we urge the Commission to expedite its fact finding and consideration of enforcement options. We look forward to the Commission providing monthly updates as Fact Finding No. 29 and other related Commission efforts progress.

Sincerely,

ADRIAN SMITH,
Member of Congress.

JIM COSTA,
Member of Congress.

RODNEY DAVIS,
Member of Congress.

JOHN GARAMENDI,
Member of Congress.

DUSTY JOHNSON,
Member of Congress.

TROY E. NEHLS,
Member of Congress.

KEVIN MCCARTHY,
House Republican Leader.

JIMMY PANETTA,
Member of Congress.

MIKE THOMPSON,
Member of Congress.

SAM GRAVES,
Member of Congress.

DAVID SCOTT,
Member of Congress.

GLENN 'GT' THOMPSON,
Member of Congress.

SANFORD BISHOP,
Member of Congress.

KEVIN HERN,
Member of Congress.

ERIC A. 'RICK' CRAWFORD,
Member of Congress.

DAVID ROUZER,
Member of Congress.

MIKE QUIGLEY,
Member of Congress.

DARIN LAHOOD,
Member of Congress.

DOUG LAMALFA,
Member of Congress.

ANN MCLANE KUSTER,
Member of Congress.

DAN BISHOP,
Member of Congress.

AUSTIN SCOTT,
Member of Congress.

DAN NEWHOUSE,
Member of Congress.

DON BACON,
Member of Congress.

DAVID G. VALADAO,
Member of Congress.

MIKE BOST,
Member of Congress.

BILLY LONG,
Member of Congress.

BARRY MOORE,
Member of Congress.

A. DREW FERGUSON IV,
Member of Congress.

LLOYD SMUCKER,
Member of Congress.

STEVE WOMACK,
Member of Congress.

DEVIN NUNES,
Member of Congress.

TOM REED,
Member of Congress.

CHRIS JACOBS,
Member of Congress.

JOSH HARDER,
Member of Congress.

ASHLEY HINSON,
Member of Congress.

JULIA BROWNLEY,
Member of Congress.

RUSS FULCHER,
Member of Congress.

DAN MEUSER,
Member of Congress.

W. GREGORY STEUBE,
Member of Congress.

TRENT KELLY,
Member of Congress.

CATHY MCMORRIS RODGERS,
Member of Congress.

TROY BALDERSON,
Member of Congress.

TOM O'HALLERAN,
Member of Congress.

JIM BANKS,
Member of Congress.

BRIAN FITZPATRICK,
Member of Congress.

VICKY HARTZLER,
Member of Congress.

ANGIE CRAIG,
Member of Congress.

ANTHONY GONZALEZ,
Member of Congress.

KEN CALVERT,
Member of Congress.

JOHN ROSE,
Member of Congress.

ANDY HARRIS,
Member of Congress.

RON KIND,
Member of Congress.

MARKWAYNE MULLIN,
Member of Congress.

RO KHANNA,
Member of Congress.

DARRELL ISSA,
Member of Congress.

JODEY C. ARRINGTON,
Member of Congress.
TRACEY MANN,
Member of Congress.
JOHN KATKO,
Member of Congress.
JAMES COMER,
Member of Congress.
CHERI BUSTOS,
Member of Congress.
BRUCE WESTERMAN,
Member of Congress.
AMI BERA,
Member of Congress.
JACKIE WALORSKI,
Member of Congress.
PETE STAUBER,
Member of Congress.
BILL HUIZENGA,
Member of Congress.
SUZAN DELBENE,
Member of Congress.
RANDY FEENSTRA,
Member of Congress.
KIM SCHRIER,
Member of Congress.
KELLY ARMSTRONG,
Member of Congress.
ANN KIRKPATRICK,
Member of Congress.
MICHAEL CLOUD,
Member of Congress.
KAT CAMMACK,
Member of Congress.
FRANK LUCAS,
Member of Congress.
CAROL D. MILLER,
Member of Congress.
MARK POCAN,
Member of Congress.
JACK BERGMAN,
Member of Congress.
BARBARA LEE,
Member of Congress.
ANTONIO DELGADO,
Member of Congress.
BEN CLINE,
Member of Congress.
MICHELLE FISCHBACH,
Member of Congress.
CINDY AXNE,
Member of Congress.
JAMES R. BAIRD,
Member of Congress.
JASON SMITH,
Member of Congress.

RANDY K. WEBER,
Member of Congress.
DEREK KILMER,
Member of Congress.
HENRY CUELLAR,
Member of Congress.
SHARICE L. DAVIDS,
Member of Congress.
BOB GIBBS,
Member of Congress.
BRAD R. WENSTRUP,
Member of Congress.
J. FRENCH HILL,
Member of Congress.
YOUNG KIM,
Member of Congress.
ELISE M. STEFANIK,
Member of Congress.
TOM EMMER,
Member of Congress.
RICK ALLEN,
Member of Congress.
KURT SCHRADER,
Member of Congress.
DORIS MATSUI,
Member of Congress.
JERRY MCNERNEY,
Member of Congress.
RAUL RUIZ,
Member of Congress.
ROBERT B. ADERHOLT,
Member of Congress.
JEFF FORTENBERRY,
Member of Congress.
JOHN RUTHERFORD,
Member of Congress.
JIM HAGEDORN,
Member of Congress.
EMANUEL CLEAVER II,
Member of Congress.
JEFFERSON VAN DREW,
Member of Congress.
DAVID KUSTOFF,
Member of Congress.
DANIEL T. KILDEE,
Member of Congress.
J. LUIS CORREA,
Member of Congress.
JAHANA HAYES,
Member of Congress.
STACEY E. PLASKETT,
Member of Congress.
ABIGAIL D. SPANBERGER,
Member of Congress.

Cc: The Honorable Rebecca F. Dye, Commissioner, Federal Maritime Commission
The Honorable Daniel B. Maffei, Commissioner, Federal Maritime Commission
The Honorable Louis E. Sola, Commissioner, Federal Maritime Commission
The Honorable Carl W. Bentzel, Commissioner, Federal Maritime Commission

Letter of March 8, 2021, from Hon. Peter A. DeFazio, Chair, House Committee on Transportation and Infrastructure et al., Submitted for the Record by Hon. Bob Gibbs

MARCH 8, 2021.

The Honorable MICHAEL A. KHOURI,
Chairman,
Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC 20573.

DEAR CHAIRMAN KHOURI:

As you are aware, the COVID-19 pandemic completely upended the shipping industry, resulting in severe backups at ports and disrupting every link in the maritime supply chain.¹ Unprecedented demand for imported products due to the consumer shift toward mass home delivery has exacerbated our trade imbalance with foreign countries.²

In response, many ocean carriers have prioritized higher value foreign goods over U.S. agricultural products.³ These carriers have elected to ship empty containers back to foreign ports while increasing charges on agricultural exports up to \$500 per container to China and other Asian countries, resulting in limited shipping capacity for U.S. farm exporters.⁴ This has led to widespread spoilage of produce and threatens not only the financial wellbeing of our farmers, but also the reliability of our domestic agriculture industry as an international trade partner, the delivery schedules for other intermodal components of the supply chain, the lifeblood of our rural communities, and the broader U.S. economy.

Sales of U.S. agricultural products to foreign markets account for one-fifth of U.S. agricultural production, representing \$136 billion and approximately 8 percent of total U.S. exports in FY 2020.⁵ The economic benefits of agricultural exports also extend across rural communities, while overseas farm sales help to buoy a wide array of industries linked to agriculture, including transportation, processing, and farm input suppliers.⁶ Further, the U.S. Department of Agriculture's Economic Research Service forecasts inflation-adjusted U.S. net cash farm income to decrease \$10.4 billion and for U.S. net farm income to decrease \$12.0 billion in 2021.⁷

We are writing to ask that the Federal Maritime Commission takes immediate action to ensure that ocean carriers are abiding by subtitle IV, Regulation of Ocean Shipping, of title 46, United States Code, popularly known as the Shipping Act. Specifically, we would like to know:

1. If Commissioner Dye's Fact Finding 29 investigation on International Ocean Transportation Supply Chain Engagement found that the carriers and MTOs are operating in compliance with the Interpretive Rule on Detention and Demurrage that became effective on May 18, 2020.⁸
2. Whether there have been any violations of 46 U.S.C. 41102(c), which prohibits unjust and unreasonable ocean shipping practices and regulations related to, or connected with, receiving, handling, storing, or delivering property.

If you have questions, please contact Matt Dwyer, Democratic Staff Director, Subcommittee on Coast Guard and Maritime Transportation or John Clark Rayfield, Republican Staff Director, Subcommittee on Coast Guard and Maritime Transportation. We appreciate your attention to this matter and look forward to hearing any updates from the Federal Maritime Commission.

¹Marketplace. *Record port backups hit California as U.S. consumers supercharge purchases* (January 29, 2021) available at <https://www.marketplace.org/2021/01/29/record-port-backups-hit-california-as-u-s-consumers-supercharge-purchases/>

²The Wall Street Journal. *Global Outlook Brightens as U.S. Consumer Imports Reach Pre-Pandemic Levels* (October 6, 2020) available at <https://www.wsj.com/articles/u-s-trade-gap-in-august-was-largest-since-2006-11601988513>

³CNBC. *California asks Federal Maritime Commission to take action on agricultural shipping delays* (February 2, 2021) available at <https://www.cnb.com/2021/02/02/california-asks-federal-maritime-commission-to-take-action-on-shipping-delays.html>

⁴*Id.*

⁵Congressional Research Service. *Major Agricultural Trade Issues in the 117th Congress* (January 8, 2021) available at <https://www.crs.gov/Reports/R46653?source=search&guid=de388c374cf24f6e9e8c94e536ca9e17&index=5>

⁶*Id.*

⁷USDA Economic Research Service. *U.S. farm sector profits forecast to fall in 2021* (February 5, 2021) available at <https://www.ers.usda.gov/data-products/chart-gallery/gallery/chart-detail/?chartId=100436>

⁸Fed. Maritime Com. FF no. 29, 85 Fed. Reg. 19146 (April 6, 2020).

Sincerely,

PETER A. DEFAZIO,
Chair, House Committee on Transportation and Infrastructure.
 SAM GRAVES,
Ranking Member, House Committee on Transportation and Infrastructure.
 SALUD O. CARBAJAL,
Chair, Subcommittee on Coast Guard and Maritime Transportation.
 BOB GIBBS,
Ranking Member, Subcommittee on Coast Guard and Maritime Transportation.

**Letter of March 2, 2021, from Hon. John Thune, U.S. Senator et al.,
 Submitted for the Record by Hon. Bob Gibbs**

MARCH 2, 2021.

The Honorable MICHAEL KHOURI,
*Chairman,
 Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC
 20573.*

DEAR CHAIRMAN KHOURI:

We write to express concern with the reported practices of certain vessel-operating common carriers (VOCCs) related to the denial of carriage for agricultural commodities. If the reports are true, such practices would be unreasonable and would hurt millions of producers across the nation by preventing them from competing in overseas markets. We support the Federal Maritime Commission's current efforts to investigate these reports, and call on the Commission to quickly resolve this critical issue.

As you know, ports across the United States are experiencing unprecedented congestion and record container volumes, which alone pose significant challenges for agricultural exporters seeking to deliver their products affordably and dependably to foreign markets. In the midst of this challenge, reports that certain VOCCs are returning to their origin with empty containers rather than accepting U.S. agriculture and forestry exports not only greatly exacerbates the problem, but potentially violates the Shipping Act as an unjust and unreasonable practice.¹

We understand that the Commission in March 2020 initiated Fact Finding No. 29—led by Commissioner Rebecca Dye—which was expanded in November 2020 to investigate reports of potentially unjust and unreasonable practices by certain VOCCs discussed above. We support this investigative effort, and—in the event that unjust or unreasonable practices by certain VOCCs are discovered—urge the Commission to take appropriate enforcement actions under the Shipping Act to put an end to such practices.

The need is urgent, especially with record container volumes at the nation's major ports. These volumes, and the resulting congestion, will only grow as the global economy recovers from the coronavirus pandemic. Producers rely on competitive access to foreign markets, and the reported actions by certain VOCCs to undermine this access pose significant ramifications for agricultural exporters and the industry at large.

We look forward to reviewing the findings of Fact Finding No. 29 and other related FMC proceedings, and to working with the Commission to address this growing problem.

Sincerely,

JOHN THUNE,
United States Senator.
 AMY KLOBUCHAR,
United States Senator.
 JAMES M. INHOFE,
United States Senator.
 DIANNE FEINSTEIN,
United States Senator.
 CHUCK GRASSLEY,
United States Senator.
 PATTY MURRAY,
United States Senator.

JOHN CORNYN,
United States Senator.
 RON WYDEN,
United States Senator.
 JOHN BARRASSO,
United States Senator.
 DEBBIE STABENOW,
United States Senator.
 JERRY MORAN,
United States Senator.
 TAMMY DUCKWORTH,
United States Senator.

¹46 USC § 41102(c)

JOHN HOEVEN,
United States Senator.
 TINA SMITH,
United States Senator.
 DEB FISCHER,
United States Senator.
 RAPHAEL WARNOCK,
United States Senator.
 TOM COTTON,
United States Senator.
 STEVE DAINES,
United States Senator.

M. MICHAEL ROUNDS,
United States Senator.
 THOM TILLIS,
United States Senator.
 JONI ERNST,
United States Senator.
 MARSHA BLACKBURN,
United States Senator.
 CYNTHIA LUMMIS,
United States Senator.
 ROGER MARSHALL,
United States Senator.

cc: The Honorable Rebecca F. Dye, Commissioner, Federal Maritime Commission
 The Honorable Daniel B. Maffei, Commissioner, Federal Maritime Commission
 The Honorable Louis E. Sola, Commissioner, Federal Maritime Commission
 The Honorable Carl W. Bentzel, Commissioner, Federal Maritime Commission

**Letter of February 25, 2021, from Hon. Roger F. Wicker, Ranking Member,
 U.S. Senate Committee on Commerce, Science, and Transportation et al.,
 Submitted for the Record by Hon. Bob Gibbs**

FEBRUARY 25, 2021.

The Honorable MICHAEL KHOURI,
Chairman,
Federal Maritime Commission, 800 North Capitol Street, NW, Washington, DC
 20573.

DEAR CHAIRMAN KHOURI:

We write to express concerns with ongoing disruptions at our nation's major ports, which are having ripple effects across the supply chain. We were encouraged to see the Federal Maritime Commission's recent announcement that the agency is issuing information demand orders to ocean carriers and marine terminal operators to determine if legal obligations related to detention and demurrage practices are being met. We support this swift action, which is being led by Commissioner Rebecca F. Dye.

As you are aware, our nation's ports are experiencing significant increases in cargo volume. This volume is increasingly one-sided, with imports far outweighing exports. This imbalance is causing bottlenecks at key points in the supply chain and is affecting numerous sectors that rely on a competitive market, such as agricultural exporters and retailers. Truckers and other transportation operators are also facing challenges in handling the spike in imports.

The Commission's information-gathering initiative will provide valuable insights into these and other challenges. It should also provide information on ocean carriers and terminal operators' practices relating to container returns and container availability for exporters. We ask that you keep us informed on your findings and any plans for further action on these matters.

Throughout the pandemic, front line workers, port operators, truck drivers, maritime employees, dockworkers, and others have kept our economy moving by supporting the delivery of essential goods and supplies. These critical infrastructure employees have ensured that U.S. businesses and households receive the products they depend upon. We greatly appreciate their contributions and the Commission's work to support their efforts. Your information demand order will help support their critical role in our supply chain.

Thank you for your consideration of this request and your ongoing work to ensure our freight network remains fluid. We look forward to working with you to address this important issue.

Sincerely,

ROGER F. WICKER,
Ranking Member, U.S. Senate Committee on Commerce, Science, and
Transportation.

JOHN BOOZMAN,
Ranking Member, U.S. Senate Committee on Agriculture, Nutrition, and Forestry.

Press Release, “Rep. Schrier Sends Letter to Federal Maritime Commission About Increasing Uncertainty for Washington State Exporters,” Submitted for the Record by Hon. Bob Gibbs

REP. SCHRIER SENDS LETTER TO FEDERAL MARITIME COMMISSION ABOUT INCREASING UNCERTAINTY FOR WASHINGTON STATE EXPORTERS

For IMMEDIATE Release
March 2, 2021

WASHINGTON, DC—Congresswoman *Kim Schrier*, M.D. (WA-08) today sent a letter to the Federal Maritime Commission (FMC) with concerns about foreign-owned ocean carriers returning empty containers to China for quick turnaround in order to get more Chinese exports to the U.S. This practice is extremely harmful to U.S. farmers, who are left unable to reliably ship their goods overseas, and to the 8th District’s economy. Too often, Washington state’s farmers and growers don’t know when a ship will be in port, making it difficult to get their products to the carrier in time. Farmers and growers are also forced to pay additional fees when their products, often perishable, have to wait at the port to be loaded onto a ship. And the buyers overseas become understandably frustrated with late deliveries. Washington’s farmers and growers risk losing their foreign markets.

In the letter Rep. Schrier says, “Washington’s 8th Congressional District stretches across the Cascade Mountains and is home to some of the nation’s largest agricultural producers and exporters, selling hay, apples, pears, and cherries around the world. For months, these exporters have shared with me how carriers favoring empty export containers is impacting their industries, threatening export markets and souring relationships they have developed and maintained over decades. It is not an exaggeration to say that the economic health of my district is being directly threatened by the actions of the nine major ocean carriers.”

In her letter, Rep. Schrier says that she believes the carriers could be in violation of the Shipping Act and requests the FMC to use all available tools to end the unfair behavior of prioritizing certain exports.

“Our products, primarily Apples and Pears, are highly perishable products, which also happen to be produced by many, many other countries around the world, including China, the EU nations, and many Southern Hemisphere countries. When shipping companies abruptly increase our cost, restrict our cargo, delay our cargo, or simply refuse to carry our cargo, we lose sales opportunities which we cannot get back. In my estimation, the current issues we are facing with respect to loading and movement of our cargo to customers around the world, will result in Export sales losses in the millions of dollars for our current crop alone. Simply missing or skipping one week of shipments to an important market can mean missed sales of \$250,000–500,000 in value ... and we have faced a number of missed weeks, skipped weeks, and downright refusals already. Those sales don’t come back. They are gone for good,” said *Dave Martin*, Export Sales Manager, Stemilt Growers LLC.

Earlier this month Rep. Schrier spoke with several commissioners on the Federal Maritime Commission who shared her concerns about this issue and how it affects America’s exporters. In her letter Rep. Schrier tells the Commission that she will pursue legislative action if the Commission needs that assistance to rectify this situation.

A copy of the letter is below.

#

Dear Commissioners:

I am writing to express my concerns about reports that foreign-owned ocean carriers are unfairly prioritizing importation of foreign goods over U.S. exports. For faster turnaround, the carriers take empty containers back to China, rather than waiting to load the ships with U.S. agricultural exports. This is heavily impacting the viability of U.S. farmers and exporters.

I understand that the Federal Maritime Commission is already engaged on this issue, has launched a formal investigation into ocean carrier practices, and is determining whether the carriers’ actions may be in violation of the Shipping Act. Today I want to offer the Commission my full support and encourage you to use whatever means are within your authority to end this unfair behavior.

COVID-19 has disrupted global supply chains, upended long-standing trade patterns, and created bottlenecks at ports around the world. It is understandable that ocean carriers—along with terminal operators, exporters, truckers, and just about the entire international trade economy—have struggled to overcome these logistical

challenges. And yet, from what I am hearing from Washington state exporters, the current lack of container availability cannot be attributed to pandemic-related disruptions alone. Ocean carriers seem to be making a revenue-based decision to reject U.S. exports.

This rejection, as well as the carriers' failure to provide accurate notice of arrival and departure times, frequent last-minute booking cancelations, and questionable demurrage and detention practices, is hurting American farmers and exporters. I have heard from many of them in my district.

Washington's 8th Congressional District stretches across the Cascade Mountains and is home to some of the nation's largest agricultural producers and exporters, selling hay, apples, pears, and cherries around the world. For months, these exporters have shared with me how carriers favoring empty export containers is impacting their industries, threatening export markets and souring relationships they have developed and maintained over decades. It is not an exaggeration to say that the economic health of my district is being directly threatened by the actions of the nine major ocean carriers.

The widespread rejection of U.S. exports must end. American farmers and agricultural exporters are depending on you to stand up against these unfair practices. I support any FMC enforcement action that will ensure ocean carrier compliance with the Shipping Act and bring desperately needed relief to our exporters. If you find that current regulations do not adequately equip the Commission with enforcement capability, I am happy to work with my colleagues to pursue legislative language to grant you that authority.

Thank you for your commitment to protecting American exporters and consumers. If you have any questions or concerns, please do not hesitate to contact me or my staff.

Sincerely,

KIM SCHRIER, M.D.,
Member of Congress.

Article entitled, "Carriers Rejected at Least \$1.3 Billion in Potential U.S. Agricultural Exports From July to December," CNBC.com, March 15, 2021, by Lori Ann LaRocco, Submitted for the Record by Hon. Bob Gibbs

CARRIERS REJECTED AT LEAST \$1.3 BILLION IN POTENTIAL U.S. AGRICULTURAL EXPORTS FROM JULY TO DECEMBER

CNBC.com, March 15, 2021 2:42 p.m. EDT, updated 2:45 p.m. EDT
by Lori Ann LaRocco

Key Points

- The United States saw at least \$1.3 billion in potential agricultural exports rejected at major ports on the East and West coasts, from July to December last year, according to a CNBC analysis.
- The rejections were particularly heavy in December, according to analysis of data compiled from the Census Bureau and the Ports of Los Angeles and Long Beach in California, and the Port of New York in New Jersey.
- This investigation comes at a time where China's exports hit records. The full year trade surplus reached \$535 billion, the highest since 2015.

The United States saw at least \$1.3 billion in potential agricultural exports rejected at major ports on the East and West coasts, from July to December last year, according to a CNBC analysis.

The rejections were particularly heavy in December, according to analysis of data compiled from the Census Bureau and the Ports of Los Angeles and Long Beach in California, and the Port of New York in New Jersey.

The estimated total value of lost export trade from the three ports for December was a minimum of \$257.5 million. The Port of New York and New Jersey saw its largest volume of export rejections for 2020 during December.

The maritime carriers' export decisions at these ports are under investigation by the Federal Maritime Commission. Commissioners are examining whether this denial of trade is in violation of the 1984 Shipping Act. This investigation comes at a time where China's exports hit records. The full year trade surplus reached \$535 billion, the highest since 2015.

One of the key legal obligations in the Shipping Act is the nondiscriminatory regulatory process by the carriers for the movement of goods by water. Maritime carriers have been favoring sending back empty containers to China in an effort to

quickly fill the boxes so they can be transported along the more lucrative China-U.S. route.

According to the Freightos Baltic Index, carriers are charging \$5,548 a container to the East Coast, and \$4,571 to the West Coast. U.S. agricultural export containers take longer to process because the product needs to be unloaded and the container needs to be cleaned. The route from the U.S. to China is also a fraction of the price (\$715 a container), so carriers can afford to return empties instead of containers full of agriculture.

“Carrier practices are not only inflicting significant financial damage to U.S. exporters and importers, but are extremely short-sighted,” said Peter Friedmann, executive director of the Agriculture Transportation Coalition. “Those practices are causing U.S. exporters to lose foreign customers, and setting the stage for the ocean carriers themselves to lose significant business in the future.”

In December, shippers rejected an estimated 72,508 containers known as 20-foot equivalent units, or TEUs, according to CNBC’s data analysis. That tally was calculated by taking the difference between the actual empty exports in 2020 versus the 2019 share of export empties. The difference represents the amount of empty container exports that should have been filled in 2020.

From July through December, a total of 370,505 TEUs were denied out of the ports of Los Angeles, Long Beach, and New York and New Jersey, with a container deficit value of \$1.3 billion.

To calculate the minimal value in the potential lost trade as a result of the rejection of agricultural exports, CNBC used the Port of Los Angeles’ containerized agricultural export price for soybeans/oilseeds/grains, which can be found on the U.S. Census, USA Trade Online [<https://usatrade.census.gov/>] site. The value of this export is \$3,552 a TEU. It is one of the lower valued exports.

China and Brazil

Starting in the new year, China traditionally starts buying from the United States’ top soybean competitor, Brazil. The Agriculture Transportation Coalition’s Friedmann says this rejection of trade can only provide more opportunity for Brazil.

“Brazil expanded its soybean production during the trade war and this denial of trade can only help them at the expense of the U.S. farmer,” said Friedmann. “When foreign customers are denied affordable/dependable U.S. ag exports by carrier practices, they find alternative sourcing to U.S. agriculture, and simply do not return to their U.S. sources.”

Friedmann said Asian buyers are frustrated. One of the largest soybean buyers in Asia is looking to switch delivery of U.S. soybeans from container to bulk freight, which can impact American jobs.

“Major China animal feed importers of U.S. soybeans are fed up with ocean carrier practices, charges and the dependability of container delivery,” Friedmann explained. “Once these Chinese customers switch, they may never come back to the container model and that impact jobs at the port. Container ships generate more man-hours. This will mean many fewer containers to be loaded at our marine terminals, less work for longshoremen and fewer containers to be carried on container vessels, for years to come.”

The decrease in U.S. exports can also be tracked in the global containerized trade data by local and global transport and logistics research company MDS Transmodal, China’s share of global exports increased in the third and fourth quarters of 2020. North America’s global export share however, never recovered.

“The increase in global trade was mainly driven by China, which has not only retained the title of ‘factory of the world’ but improved its position,” explained Antonella Teodoro, Senior Consultant at MDST.

Other ports and next steps

The Northwest Seaport Alliance, the fourth-largest container gateway in North America, comprised of the Port of Seattle and Port of Tacoma, tells CNBC it also suffered a large loss in exports. In 2019, the ports moved out 913,332 containers of full exports. In 2020, that number dropped to 790,620 containers.

“Our exporters are suffering,” said John Wolfe, chief executive officer of The Northwest Seaport Alliance. “We have spoken with our terminal operators and carriers about this issue and there is more work to be done by all in order to address the extreme challenges faced by our export community.”

CNBC sent its findings to FMC Commissioner Louis Sola.

“I can say for a fact that some carriers have decreased their exports in return for empties (mainly the European lines) while other have made a conscious effort to pick up the slack and increases their exports in 2020 (mostly the Asian lines),” said

Sola. “I do find this most interesting and warrant that it requires further discussion.”

Sola said he is also keeping an eye on the potential jobs impact.

“This assertion warrants review. We support our longshore workers. Indeed, that is why I have attempted to draw attention to the loss of work generated by the cessation of cruises to our cruise ports across the nation and speak out for the safe resumption of cruising,” he said.

The imbalance of trade has created an outpouring of letters by American exporters pleading for intervention by the Federal Maritime Commission. Letters have also been sent by politicians on both sides of the aisle. FMC Commissioner Rebecca Dye is currently leading an investigation into the carrier’s actions in a Fact Finding 29 investigation.

The investigation was authorized in March 2020, and was expanded in November to include the container return and container availability for U.S. export cargo, as well as the charges in storage and late fees carriers are charging exporters.

“No public servant enjoys a trade deficit unless it is the other fellow’s deficit,” said Sola. “America is best served when we ship more product out than we ship in.”

Article entitled, “COVID-19 Even Affects Apples: Washington Farm Exports Crimped by Cargo-Container Shortage,” Seattle Times, March 9, 2021, by Paul Roberts, Seattle Times Business Reporter, Submitted for the Record by Hon. Bob Gibbs

COVID-19 EVEN AFFECTS APPLES: WASHINGTON FARM EXPORTS CRIMPED BY CARGO-CONTAINER SHORTAGE

The Seattle Times, March 9, 2021 6:01 a.m., updated March 12, 2021 9:03 a.m.
by Paul Roberts, Seattle Times business reporter

In Wenatchee, tens of thousands of boxes of apples that should be on their way to the Middle East and Asia are piling up instead in warehouses.

In Ellensburg, it’s a similar story for mountains of hay bales that would otherwise be on container ships bound for Japan and South Korea.

The problem isn’t a lack of demand: Foreign buyers are eager for farm goods from Washington and other states. But thanks to the strange effects of COVID-19 on global shipping, U.S. farm exports are barely moving.

In normal times, “We ship 10 to 15 containers of fruit every week into Taiwan,” says Dave Martin, export sales manager for Stemilt Growers in Wenatchee, one of Washington’s biggest tree-fruit exporters. “This week, we will not have a ship.”

The shortage of cargo space has backed up Stemilt’s huge packing operations and idled dozens of truckers who normally haul the 40-foot-long containers to the ports of Seattle and Tacoma. It has also prompted Stemilt’s foreign buyers to look to competitors in countries such as Chile, where the apple harvest is just starting. “Those sales are lost,” Martin says of the numerous foreign shipments Stemilt has forgone since November, when the shipping crisis became severe.

The cargo-space crunch is the latest symptom of a global trade system that was unbalanced even before the pandemic, but is now so lopsided that entire sectors are at a virtual standstill.

Since the start of the pandemic last spring, Americans have spent far less on services, such as dining out, and far more with Amazon and other online retailers. That in turn has sparked a surge in imports from Asia.

The wave of mainly Chinese goods has overwhelmed some West Coast ports, especially in Los Angeles, where ships often sit for days waiting to unload. And because some of those ships, once they unload in Los Angeles, go pick up cargo at other West Coast ports, bottlenecks in Southern California have meant major delays for exporters waiting to load their goods in Seattle and Tacoma.

“We are now experiencing unprecedented eastbound cargo volumes coming out of Asia to the U.S., and it’s creating huge disruptions within the supply chain,” says John Wolfe, chief executive officer of the Northwest Seaport Alliance, which manages marine cargo operations in the ports of Seattle and Tacoma.

But the surge in Asian imports has had another effect on Northwest farmers. Because U.S. demand for Asian products is so high, shipping companies can now make far more money sending empty containers back to China as soon as possible, rather than take the time to refill them with American farm products.

It’s simple economics: Because a container of Chinese electronics, apparel and other exports is generally worth more than one filled with American farm products, shippers can charge more per eastbound container load, says Peter Friedmann with

the Agriculture Transportation Coalition in Washington, D.C. For that reason, it's more profitable for carriers to speed that container back to Asia for another high-value load than it is to wait for several days while a U.S. exporter fills the container with hay or apples or some other low-value product. Pound for pound, the value of American apples or potatoes or "is a mere fraction of the value of a container load of, say, Adidas running shoes," Friedmann says.

That imbalance has meant more empty cargo containers leaving the ports of Seattle and Tacoma: In January 2020, just 37% of the containers exported from Seattle and Tacoma were empty, according to NW Seaport Alliance figures. This January, just over half went back empty. (Due to the greater weight of American exports, outbound ships always carry some empty containers.)

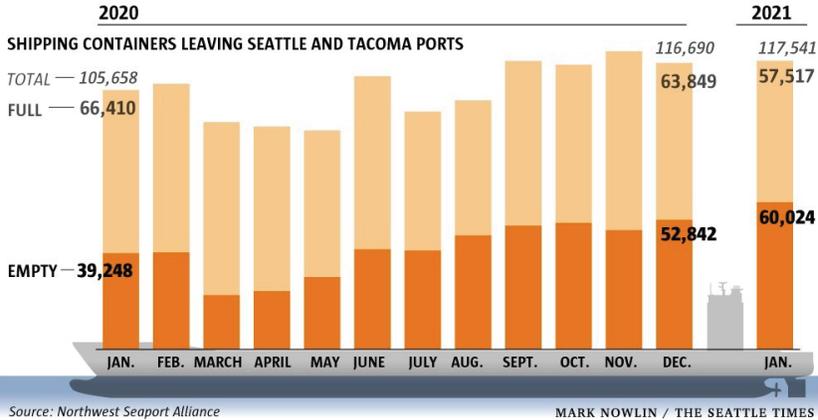
In fact, eastbound cargo is now so much more profitable—around \$6,000 per container on average, versus \$3,500 or so for westbound containers—that some cargo ships that unload their Asian goods in Southern California now skip scheduled calls at Seattle or Tacoma and head straight back to Asia.

That has meant fewer vessels calling in Seattle and Tacoma during the pandemic: Vessel calls in January 2021 were down nearly 20%, to 125, from a year earlier, according to alliance figures. "The shipping lines are in a rush to get their vessels and [container] equipment back to Asia to capitalize on those high-value cargo shipments out of Asia to the U.S.," says Wolfe.

For exporters in Washington and elsewhere in the U.S., that east-west imbalance has created massive ripples up and down the exporters' supply chain.

Empty-handed

Shippers are hauling more empty cargo containers back to Asia, rather than waiting to fill them with Washington crops for export.



Ships are routinely delayed or canceled outright, often with little time for exporters to make alternative arrangements.

Before the pandemic, truckers could pick up a newly emptied container at the port in a few hours and drive it back to Eastern Washington to fill with produce, says Bryan Gonzalez, with Washington agricultural exporting firm FC Bloxom & Co. These days, Gonzalez says, drivers can wait all day for a container—and in a few cases, they were told to "come back to tomorrow."

Those delays create additional and expensive backlogs at processing plants and packing sheds. And things are about to get worse as exporters who haven't sold all of last year's crop now brace for this year's harvest.

In a few months, for example, hay farmers in the Pacific Northwest will start cutting the first crops of 2021, "and we've still got a lot of last year's crop that needs to be moving," says Ellensburg hay exporter Mark Anderson. His company, Anderson Hay, normally sells 90% of its product to foreign buyers, but now struggles to find cargo space.

"It's become, really, a complete supply chain meltdown on the Pacific Ocean," Anderson says, who worries that some customers may switch to Australian hay.

Trade economists and policymakers expect the capacity shortages to fade as the pandemic ends and normal consumer patterns return. But many exporters fear that by then, they may have permanently lost some market share.

“My biggest worry is that suddenly what seemed like a blip in exports and a temporary problem becomes, well, now China is going elsewhere for their apples and their cherries and their hay,” says Rep. Kim Schrier, D-Sammamish.

Schrier knows farmers and exporters have little leverage in a shipping business that is now dominated by just a handful of massive, foreign-owned firms, whom exporters can’t afford to offend. “Their hands are tied,” she says.

Instead, she wants the federal government to pressure shipping companies to make more room for American exports on westbound ships by minimizing the empties they take back to Asia.

Schrier says that the Federal Maritime Commission is already exploring whether shipping companies’ practices violate U.S. shipping law—and thinks the threat of federal action or a congressional inquiry could induce shippers to “think twice” and stay in U.S. ports long enough to load more full cargo containers.

Two of the ports’ biggest carriers—MSC and Maersk—did not respond to requests for comment. (In a subsequent email, an MSC spokesperson said the firm is working to ease the container shortage by adding vessels and rerouting some cargo away from congested ports, among other measures.)

“Sometimes, just pushing into investigating an issue is enough to make things happen,” Schrier says. “But if not, we are prepared to work ... with the Federal Maritime Commission to make sure we have fair agreements” for shipping.

This story has been updated with a response from MSC.

Presentation, “The Anatomy of the Container Terminal Logistics Supply Chain Congestion Issues at the San Pedro Bay Ports During the COVID-19 Pandemic,” prepared by Martin Associates, June 30, 2021, Submitted for the Record by Hon. Alan S. Lowenthal

[The 21-page presentation is retained in committee files and is available online at https://www.pmanet.org/wp-content/uploads/2021/07/John_Martin_Research-July_2021.pdf (accessed September 8, 2021). A summary of the research appears directly below.]

Research Summary, “The Anatomy of the Container Terminal Logistics Supply Chain Congestion Issues at the San Pedro Bay Ports During the COVID-19 Pandemic,” prepared by John Martin, Ph.D., July 2021, Submitted for the Record by Hon. Alan S. Lowenthal

COVID-19 has led to dramatic swings in cargo volumes on the West Coast—from a stark plummet early in the pandemic to an unprecedented surge beginning in Q2 of 2020 and continuing today. This wave of Asian imports has stretched the regional and national supply chains at every point. Warehouses are filled, causing back-ups all the way to port terminals, made worse by shortages of shipping containers, rail cars, trucks, and chassis to meet the enormous demand.

With the historic supply chain congestion placing marine terminals under enormous pressure, the Pacific Maritime Association commissioned noted maritime economist John Martin, Ph.D., to evaluate the core causes of the congestion. A summary of Dr. Martin’s data-driven findings follows:

- The terminal and vessel backlogs that occurred in San Pedro between July 2020 and March 2021 were the result of a cumulative collapse of the entire logistics supply chain. These backups have kept ships waiting at anchorage for days and even weeks, and led ships at LA/Long Beach to decline or cancel labor more than 1,000 times between October 2020 and March 2021.
- There was an unprecedented increase in TEU volume at San Pedro Bay Ports starting in April 2020 and peaking in October 2020 and again in March 2021, and remaining at historical high levels from July 2020. For example, total TEUs handled at the Ports of LA/Long Beach in March 2020 plummeted to under one million, and nearly doubled a year later to 1.8 million.
- ILWU labor hours increased in response to this volume growth, also remaining at historical levels from July 2020, yet production per ILWU hour began to decline, reflecting terminal congestion. It is important to note that the TEU throughput per hour at automated terminals continued an upper trend during the pandemic compared to traditional terminals.
- Terminal dwell times for containers also began increasing in July 2020 and remained at historical high levels through February 2021. As PMA CEO Jim McKenna wrote in the Wall Street Journal, “Dwell times, which measure how

long a container remains at a terminal, peaked in January at over five days—more than twice the standard length. That’s because the supply chain reached full capacity, leaving containers with nowhere to go.”

- Street dwell times for chassis have also hit crisis levels, exceeding the “red zone critical dwell time” of six days continually since November 2020. In fact, early December 2020 and early January 2021 showed peak street dwell times for chassis at 9 days—a full week above the optimal two-day average “green zone” established by the Pool of Pools and Harbor Trucking Association. This corresponded to the peak terminal dwell times and transload/warehouse congestion.
- Truck turn times (from pedestal to pedestal) reflecting queue time outside the gate, retrieval time in the terminal and exit, reached between 60 and 70 minutes beginning in September 2020 and grew to record levels in October and November 2020, and remained high through March 2021.
- This on-terminal congestion reflects the growth in on-street dwell times for trucks (measured in terms of chassis turns) moving to and from transload facilities, indicating congestion at the regional transload and distribution centers, as well as the limited and declining vacancy rate of industrial warehouse property in Southern California and the Inland Empire. Data show that the vacancy rate of industrial warehouse space has been declining in the Inland Empire to under 4%, and is under 2% in the Los Angeles South Bay area near the ports. These extremely low vacancy rates suggest a critical warehouse and transload facility shortage in the Southern California region. Since about 60% of the intermodal containers are currently transloaded, capacity constraints and congestion at regional warehouse and transload facilities also effect discretionary cargo bound for markets east of the Rockies, critical to the health of West Coast ports.
- Further exacerbating the off-terminal congestion is the fact that rail capacity was curtailed through 2020 and early 2021, as reflected by the reduced number of intermodal trains moving daily through the Alameda Corridor. The number of trains per month in 2020–21 has plummeted from the average number throughout the entire year of 2018, for example. During 2020 to the end of March 2021, the average number of daily trains through the Alameda Corridor was at historically low levels, reflecting potential rail car shortages, a shifting of service levels by the railroads, or both.
- The ILWU was able to respond to the terminal volume demand, but the breakdown in off-terminal logistics systems, primarily warehouse/transload capacity and intermodal rail service, led to the terminal and vessel congestion. The percentage of container vessels at berth either cancelling labor gangs and/or not requesting labor increased to more than 40% per day in peak days in November 2020, and averaged more than 13% per day through March 2021, reflecting the outside the terminal congestion issues.

APPENDIX

QUESTION FROM HON. JULIA BROWNLEY TO HON. DANIEL B. MAFFEI, CHAIRMAN,
FEDERAL MARITIME COMMISSION

Question 1. Have you engaged with U.S. Trade Representative Katherine Tai and others in the administration to discuss how we can resolve some of the shipping challenges through trade policy and bi-lateral or multi-lateral agreements to prevent overcharging of shippers?

ANSWER. We have engaged with the Office of the U.S. Trade Representative to determine how we can cooperate on areas of mutual interest. We will be happy to share our expertise with their office.

Though the Federal Maritime Commission is an independent agency, we do seek to cooperate with other Executive Branch agencies where appropriate and the public interest is served. In response to ongoing issues related to ocean shipping, I have had meetings with counterparts from the Surface Transportation Board, the Department of Transportation, the Federal Motor Carrier Safety Administration, and the Maritime Administration.

I would also like to make you aware that the Commission was named in President Biden's recent Executive Order on Promoting Competition in the American Economy. Although not mandatory that we participate because of our status as an independent regulatory agency, I am committed to doing what I can as Chairman to cooperate with the provisions of the Executive Order and its spirit of establishing a whole-of-government approach to promoting the interests of American workers, businesses, and consumers.

Finally, we have recently entered into a Memorandum of Understanding with the Department of Justice's Antitrust Division. This agreement will allow our agencies to more closely and effectively communicate and cooperate should the need arise to address actions that may violate the laws enforced by either agency.

The underlying issues causing port congestion, higher prices to ship cargo, and degradation of the supply chain are beyond the ability of any one agency to resolve. We will continue to partner with other government agencies to bring relief to ports, shippers, transportation workers, and transportation service providers, including the ocean carriers.

QUESTIONS FROM HON. DUSTY JOHNSON TO HON. DANIEL B. MAFFEI, CHAIRMAN,
FEDERAL MARITIME COMMISSION

Question 1. In April 2020, the FMC issued new guidance about how it will assess the reasonableness of detention and demurrage practices of ocean carriers and marine terminal operators. American importers and exporters have reported numerous, and increasing, accounts of ocean carriers disregarding the guidance and routinely imposing detention and demurrage charges often in circumstances beyond the control of either the importer or exporter. How many enforcement actions has FMC initiated for these and other violations of the guidance? What penalties have been levied?

ANSWER. Since last spring, when the Federal Maritime Commission issued a non-exclusive list of factors it will consider in its reasonableness analysis (the Interpretive Rule on Detention and Demurrage Under the Shipping Act, found at 46 C.F.R. § 545.5), the Commission has received numerous complaints of varying specificity related to carrier and terminal practices, some involving demurrage and detention charges, others regarding operational issues exacerbated by the pandemic (*e.g.*, lack of empty container return location, vessel delays).

The Commission received allegations from 32 entities that potentially could be actionable—they reported occurrences involving the issues in the Interpretive Rule and/or Fact Finding 29, contained specific allegations about the conduct at issue and the carriers or terminals involved, and included information that could be substan-

tiated. The Commission is prioritizing alleged violations affecting exporters and is investigating (or has finished investigating) allegations from 14 of these entities. These investigations have not yet resulted in formal enforcement action or the issuance of civil penalties and due process for such actions takes time. However, in several instances, complaints received by the Commission have already been resolved by the parties informally.

The Commission will continue to evaluate the other potentially actionable allegations received, as well as new allegations as they come in, and bring enforcement action where appropriate.

Question 2. By electing to send empty containers back to their points of origin rather than carry U.S. exports, ocean carriers are wielding enormous power in dictating which cargo is carried, to the disadvantage of U.S. agriculture, and are inflating their own freight rates in the process. To make matters worse, U.S. exporters must rely on fewer than a dozen foreign-owned carriers to deliver U.S. agricultural products to overseas customers. Stakeholders tell me that because these carriers face few consequences for their actions, they appear impervious to U.S. oversight.

a. Is that the case—are foreign-owned ocean carriers impervious to U.S. oversight? If not, what specific actions has FMC taken in the last year that has changed the practices of the ocean carriers?

ANSWER. No entity operating within the United States, irrespective of where they are incorporated, is immune from the law or excused from regulatory oversight. Ocean carriers are no exception.

The Federal Maritime Commission has authority to seek to enjoin the operation of an agreement that violates the statutory competition standard. The Commission closely monitors the marketplace for liner services for any evidence of collusion and anticompetitive behavior. The three ocean carrier alliance agreements receive the highest degree of scrutiny by the agency's Bureau of Trade Analysis (BTA). BTA monitors the alliances for behavior that could violate the standard established in 46 U.S.C. § 41307(b), which states that the Commission may file an injunction against any agreement that, by a reduction in competition, produces an unreasonable reduction in transportation service or an unreasonable increase in transportation cost or substantially lessens competition in the purchasing of certain covered services.

The Commission also has the authority to amend the monitoring requirements, and has done so during the past year, to get even more timely information beneficial to its monitoring work.

Additionally, ocean carriers are subject to the prohibitions and penalties established in Chapter 411 of Title 46.

A formal investigation by the Commission is one way to provide oversight to ocean carriers, but it is not the only way. Shippers have the opportunity to bring cases to the Commission as well: sworn formal complaints can be filed to be adjudicated by the Commission's ALJ (in accordance with 46 C.F.R. § 502.62); small claims under \$50,000 can be brought through the Commission's informal adjudication process (46 C.F.R. §§ 502.301–502.321); and if the party does not wish to pursue either of these options, allegations can be sent to the Commission's Bureau of Enforcement (BOE) for further consideration which may lead to a Commission-initiated BOE investigation. In addition, the Commission's Office of Consumer Affairs and Dispute Resolution Services (CADRS) offers ombuds assistance, mediation, facilitation, and arbitration to resolve challenges and disputes involving violations of the Shipping Act (*see* 46 C.F.R. § 502.401).

The relatively few formal private party complaints filed related to current market conditions has led the Commission to pursue self-initiated enforcement actions. The Commission will take action against any entity for any behavior that violates the law.

The Commission is sometimes criticized for a perceived lack of oversight of the rates charged by ocean carriers. High prices for ocean cargo services are not in and of themselves proof of a collusive marketplace or evidence of anticompetitive behavior. Similarly, the comparatively high volume of empty containers returning overseas to serve the East-West trades, is not proof of ocean carriers dictating whose cargo is carried. The marketplace has determined there is more demand for goods coming into the United States than leaving the Nation and it is setting the price for the service and the priority for deployment of the intermodal equipment.

b. Does FMC have the regulatory tools needed to adequately address this crisis? If not, what authority does the FMC currently lack that would enable it to take more immediate action?

ANSWER. The Federal Maritime Commission does have adequate regulatory tools to achieve its current mission, to ensure a marketplace for ocean liner services free of collusion and anticompetitive behavior.

However, this question fundamentally goes to what sort of agency the Commission should be, which in turn would dictate what authorities it should possess.

The Commission is only authorized by Congress to regulate some facets of the freight delivery system. We have stepped into the role of promoting supply chain efficiency and reliability because of the unique relationships we have with all parties involved in the movement of ocean cargo. This has allowed us to act as a convener of sorts over the years, with positive results.

The Commission does not regulate ocean carrier rates, reliability, or what cargoes a common carrier prioritizes when space is limited. Even in the case where the Commission does have authority—to deny anti-trust immunity to an alliance were it to violate the statutory competition standard—the Commission cannot take direct action but must go to Federal court to seek an injunction.

Therefore, whether the FMC has the tools needed to address the crisis depends on what sorts of government actions the questioner believes are warranted to adequately address this crisis. This may involve legislative changes to permit or order the FMC to take actions on some of the issues the FMC is not currently authorized to address. We will be happy to provide any technical assistance necessary to any legislative proposals put forward.

Question 3. I have heard from some stakeholders that FMC does not have legal authority to enforce its own guidance. Is that true? What, specifically, are FMC's enforcement authorities and what additional authority does FMC need?

ANSWER. The Federal Maritime Commission does have the authority to enforce its statutory mandate and its corresponding regulations. Chapter 411 of Title 46 contains prohibitions of the Shipping Act and the penalties associated with violating them.

The Interpretive Rule on Detention and Demurrage Under the Shipping Act, 46 C.F.R. § 545.5, issued in May 2020, provides guidance to the public about how the Commission will evaluate reasonableness of detention and demurrage charges to determine whether they represent a violation of 46 U.S.C. § 41102(c). This section states that “[a] common carrier, marine terminal operator, or ocean transportation intermediary may not fail to establish, observe, and enforce just and reasonable regulations and practices relating to or connected with receiving, handling, storing, or delivering property.”

The Commission does not need additional authority to pursue civil penalties for violations of § 41102(c) or any of the other prohibited acts.

The recently announced VOCC Audit Program, established at my direction on July 19, 2021, was initiated to bring ocean carriers' detention and demurrage practices into compliance with the requirements of the law. The Commission has the authority and ability to enforce against violations that are discovered through this program.

QUESTION FROM HON. ALAN S. LOWENTHAL TO HON. REBECCA F. DYE,
COMMISSIONER, FEDERAL MARITIME COMMISSION

Question 1. Commissioner Dye, you, and Chairman Maffei have spoken about some of the violations, or the problems with detention and demurrage charges. Can you elaborate for the Committee on these findings?

ANSWER. There is no question that we have more work to do to achieve complete compliance in ocean carrier and marine terminal operator policies and practices related to detention and demurrage. It is important to note that the United States is the first country in the world to attack demurrage and detention charges of U.S. and foreign ocean carriers engaged in international commerce. Ours is an approach that is responsive to complaints from shippers heard by the Commission. We are determined to enforce the law concerning demurrage and detention charges and will continue to use all our available resources to support that result. Like any other regulatory or law enforcement agency, we need complete, factual allegations of Shipping Act violations to pursue an investigation.

There has been progress on detention and demurrage. Some of our international ocean carriers are committed to change and have taken significant steps toward compliance. The Ocean Carrier Audit Team established by the Chairman as part of the VOCC Audit Program will be beneficial in helping those carriers refine their policies and practices in line with the Commission's requirements. For those carriers that have not yet matched the commitment of industry leaders, we will have the opportunity to reiterate and reinforce the mandatory requirement of their compliance.

The fundamental proposition of the Commission's rule is that detention and demurrage should serve as an incentive for shippers and truckers to keep equipment in motion. These charges should not be used by carriers and marine terminal operators as a revenue stream. Toward that end, the Commission's Demurrage and Detention rule requires compliance in four areas:

- Transparent, standardized language for demurrage and detention practices.
- Clear, simplified, and accessible demurrage and detention billing practices and dispute resolution processes.
- Explicit guidance regarding the types of evidence relevant to resolving demurrage and detention disputes.
- Consistent notice to cargo interests of container availability.

The Commission is united in support of our Demurrage and Detention requirements and will vigorously enforce the law in cooperation with affected U.S. importers and exporters.

QUESTIONS FROM HON. DUSTY JOHNSON TO HON. REBECCA F. DYE, COMMISSIONER,
FEDERAL MARITIME COMMISSION

Question 1. On March 31, 2020, FMC initiated Fact Finding 29, stating in its order: "Given the Commission's mandate to ensure an efficient and economic transportation system for ocean commerce, the Commission has a clear and compelling responsibility to actively respond to current challenges impacting the global supply chain and the American economy." In November 2020, FMC issued a supplemental order, because information collected in the fact finding raised concerns that the foreign-flagged ocean carriers may be employing practices in violation of the Shipping Act. I applaud you for initiating the investigation, but the problem remains acute. When can we expect FMC to conclude its investigation and report out findings?

ANSWER. Fact Finding Investigation 29 is conducted under two Commission Orders. The first Commission Order, issued March 2020, authorized me, as Fact Finding Officer, to engage supply chain stakeholders in public or non-public discussions to identify commercial solutions to unresolved COVID-related operational impacts to the U.S. international ocean supply chain. The Order also directed me to form one or more Supply Chain Innovation Teams from all commercial sectors of the U.S. international supply chain. These Teams are organized to develop commercial solutions to port congestion and related supply chain challenges. In a complex system like our international ocean freight delivery system, commercial solutions maximize the chance of success and minimize the risk of negative consequences.

The Fact Finding 29 Supplemental Order was issued at my request in November 2020 and authorized me to investigate several ocean carrier practices under section 41102(c) of title 46, United States Code.

Neither of these Orders contains an end date. The Commission issued these Orders without end dates to provide me, and by extension the Commission, with the flexibility to respond to rapidly changing circumstances and conditions in the U.S. international ocean supply chain during the pandemic.

The emerging consensus is that the effects from the issues that were the subject of this hearing will last throughout the remainder of this year and into 2022. There are many benefits to not concluding Fact Finding 29 prematurely. For example, I may request the Commission to amend the Supplemental Order establishing the investigation into certain ocean carrier practices. Continuing Fact Finding 29 permits me to pursue an offer from the Port of Los Angeles to determine how the data the port collects in their port information system can aid in enforcing demurrage and detention and in addressing other supply chain dislocations, including earliest return date and container return. Additionally, now that I may be able to convene Supply Chain Innovation Teams in person, we can more effectively lead a consensus on how to address operational issues undermining efficiency and adding to supply chain congestion. Soon I will convene Supply Chain Innovation Teams, starting with a focus on exporters, to develop commercial solutions to include "earliest return date," "container return," and certain information visibility problems.

As you may recall, in the first half of 2020, ports were facing a congestion problem but for reasons different than today. The closing of factories in Asia, coupled with the closing of stores, warehouses, and transportation services in the United States at the beginning of the pandemic resulted in cargo and empty containers accumulating at American ports. Ocean carriers cancelled sailings as traditional cargo volumes collapsed. Ships that did call on ports discharged cargo that could not be accepted by American importers. Some shippers abandoned their cargo, leaving it to sit on terminals. The Southern California ports were at risk of reaching capacity due to stranded and abandoned cargo. I immediately worked with port directors

around the country to locate storage space for American businesses that were shut down and unable to accept cargo.

By May 2020, I had convened nine regional FMC Supply Chain Innovation Teams as part of Fact Finding 29. These Teams included port directors, senior ocean carrier executives, marine terminal operators, and longshore labor leaders to address the underlying systemic operational issues that exacerbated supply chain disruptions. The task of the Teams was to identify commercial solutions to the most pressing supply chain problems that were compounded by the pandemic. Their first meetings determined that there were three simple pieces of information shippers could provide to marine terminal operators to prioritize delivery of cargo that had accumulated in ports and related facilities. Those recommendations were:

- Identify shipments that contain Personal Protective Equipment. These commodities must move first, and marine terminal operators need to know which containers to prioritize.
- Identify containers shippers want to accept and can be prepared to be picked-up.
- Identify containers that shippers are not able to accept or pick-up.

In June 2020, I published the findings from additional Innovation Team conversations, which were that the freight delivery system could achieve increased efficiencies in four areas:

1. Truckers should be directed to return empty containers to the terminal where they were picked up, allowing them to make dual moves and reduce the number of chassis required.
2. Notice of terminal gate closures should be given no less than three days, and preferably seven days, before gate closing. At no time should a closure occur mid-shift.
3. Notice of cancelled sailings should be given not only to beneficial cargo owners, but also posted prominently on a carrier's website, at least seven days in advance. Notice of bypassed ports should be posted at least 72 hours in advance.
4. Carriers and terminals should immediately seek to collaborate regarding Export Cargo Receiving Timelines with the goal of better coordinating their interaction.

The recommendations offered last year by the Supply Chain Innovation Teams are sound, well founded, and will lead to progress that will benefit all supply chain actors. We will continue those meetings this month.

As you noted, the Supplemental Order adding a formal investigatory aspect to the Fact Finding was not issued by the Commission until the end of November 2020. Under that Order, I have issued a Commission law enforcement demand (Section 15 Order) to 27 different entities resulting in voluminous reporting from the responding parties. Commission staff is reviewing the materials received not only to help inform as to the next steps I should take in the Fact Finding 29 Investigation, but also to determine if there are any enforcement actions the Commission can self-initiate against ocean carriers or marine terminal operators.

Fact Finding 29 is an ongoing investigation and does not need to be concluded for the Commission to bring enforcement actions based upon factual allegations or evidence of Shipping Act violations. The Commission has received few formal private-party complaints for the Commission to adjudicate. Also, the Commission has received few factual allegations concerning potential violations of the Shipping Act with enough supporting evidence to open a Commission Order of Investigation.

As you may already be aware, on July 19, 2021, the Commission, at the direction of Chairman Maffei, launched the "Vessel-Operating Common Carrier Audit Program," creating a dedicated Audit Team to examine the detention and demurrage practices of the top nine ocean carriers by market share. I strongly support this program. The efforts of the Audit Team will initially be focused on carrier compliance with the Commission rule interpreting 46 USC 41102(c) as it applies to detention and demurrage practices in the United States.

Finally, on July 28, 2021, I presented to the Commission a list of Interim Recommendations aimed at minimizing barriers to enforcement of the Shipping Act, clarifying Commission and industry processes, encouraging shippers, truckers, and other stakeholders to assist Commission enforcement efforts, and bolstering the ability of our Office of Consumer Affairs and Dispute Resolution to facilitate fair and prompt dispute resolution. The specific recommendations are:

- Amend 46 U.S.C. 41104(a)(3) to broaden the anti-retaliation provisions so that it applies to all regulated entities and protects anyone who complains about potentially unlawful conduct to the Commission.
- Amend 46 U.S.C. 41305(c) to authorize the Commission to order double reparations for violations of 46 U.S.C. 41102(c) concerning detention and demurrage.

- Issue a Commission policy statement on retaliation, attorney fees, and representational complaints.
- Revise the Commission’s website to: (a) more clearly distinguish between the processes for providing information to the Bureau of Enforcement, requesting assistance the Office of Consumer Affairs and Dispute Resolution Services, and filing a complaint; and (b) make communications more intuitive for website visitors.
- Hold a webinar to explain Commission processes.
- Issue an Advanced Notice of Proposed Rulemaking seeking industry views on whether the Commission should require common carriers and marine terminal operators to include certain minimum information on or with demurrage and detention billings and adhere to certain practices regarding the timing of demurrage and detention billings.
- Amend 46 U.S.C. 41109 and 41309 to authorize the Commission to order refund relief in addition to civil penalties in enforcement proceedings, focused on demurrage and detention refunds.
- Designate an Export Expert in the Office of Consumer Affairs and Dispute Resolution Services.

Question 2. U.S. agriculture importers, exporters, truckers, and producers have experienced what appears to be predatory and unreasonable behavior of foreign-flagged ocean carriers, which has exacerbated existing delays and congestion concerns, and has gone largely unchecked, with no sign of abating. I hear from exporters that perhaps the most egregious action perpetrated by ocean carriers is their declining to carry U.S. agriculture commodity exports, including meat and poultry exports, instead choosing to carry empty containers to Asian markets to fill them with more lucrative consumer goods to export back to the U.S. Has the FMC seen evidence of these actions by ocean carriers? If so, what enforcement actions has the FMC taken in response?

ANSWER. The Commission is aware of ocean carriers prioritizing the repositioning of empty containers to countries where imported cargo is sourced. This behavior by ocean carriers is in response to meeting the demand of American consumers for goods and American manufacturers for inputs. While demand globally is relatively flat when compared to 2019, there has been a demand in the U.S. market for 500,000 new TEUs monthly from 2019 levels. The first half of 2021 saw more than 9,500,000 TEUs of cargo enter the United States, the highest volume on record for containerized trade. In terms of equipment management, the ocean carriers are responding to the dynamics of the marketplace and are managing their equipment to deliver the cargo purchased by American consumers, manufacturers, and suppliers.

Ocean carriers are moving containerized agricultural exports from the United States in greater volumes. The most recent data available published by PIERS, a database reporting import and export statistics, shows that agricultural export volumes for January through April 2021 had increased by 6% compared to the same period last year (1,134,595 TEUs in 2021 vs. 1,067,218 TEUs in 2020). The U.S. Department of Agriculture reported in its *Outlook for U.S. Agricultural Trade*, published in May, that U.S. agricultural exports in fiscal year 2021 are projected to grow by \$7 billion for a total of \$164 billion. PIERS data shows that containerized U.S. agricultural exports rose by 9.4% in 2020.

Preventing the repositioning of equipment may further exacerbate problems with the supply chain and the movement of goods by ocean carriers. We are engaging ocean carriers and intermodal equipment providers to determine if there are initiatives that might provide more containers and chassis to agricultural export shippers. One ocean carrier has proposed that re-establishing inland container terminals would respond to exporters’ need for containers. Other parties have suggested that a new model of collapsible containers be particularly well suited to supporting agricultural exporters; when folded, one chassis can move multiple units to inland locations for lower costs.

Question 3. If current ocean carrier practices persist, and are not subject to oversight and enforcement, then the U.S. meat and poultry industry, its workers, and the related industries it supports will struggle to access vital markets that have been cultivated over decades. This is particularly concerning since Asia accounts for a significant portion of U.S. meat and poultry trade, with China, Japan, and Korea among the top markets for both beef and pork annually. While ocean carriers shirk, or outright ignore, FMC’s guidance and authority, the U.S.’s foreign competitors stand ready to fill the void left by American meat exports unable to depart U.S. ports. How long will FMC allow these practices to continue? What specifically will FMC do to ensure the timely shipment of product in accordance with one of the stated purposes of the Ocean Shipping Reform Act of 1984: “to promote the growth and

development of U.S. exports through competitive and efficient ocean transportation”?

ANSWER. The Federal Maritime Commission is aggressively pursuing compliance with the 2020 rule addressing detention and demurrage practices. Compliance with the rule is not optional and the Commission is working to make certain ocean carriers and marine terminal operators understand their responsibilities in terms of how and when these charges should be levied against shippers and truckers.

There is no question that COVID-19 impeded the ability of the FMC to do the field work and outreach necessary to achieve compliance. Now that vaccination rates have reached levels where travel and meetings are again permissible, the in-person efforts necessary to move forward with achieving wider compliance with detention and demurrage requirements are beginning.

The Vessel-Operating Common Carrier Audit Program established by Chairman Daniel Maffei on July 19, 2021, is an important step in getting to compliance. The Audit Team leader, who serves as the Commission’s Managing Director, has already contacted each of the nine top ocean carriers by market share to initiate the process. The Audit Team has set an aggressive schedule for the data it wants gathered for review. Analysis of the responses will inform the Commission on what next steps it needs to take to further its goal of compliance regarding detention and demurrage practices.

It is important to note that the United States is the first country in the world to attack demurrage and detention charges of U.S. and foreign ocean carriers engaged in international commerce. The Commission’s approach is responsive to complaints from shippers heard by the Commission. We are determined to enforce the law concerning demurrage and detention charges and will continue to use all our available resources to support that result. Like any other regulatory or law enforcement agency, we need complete, factual allegations of Shipping Act violations to pursue an investigation.

Question 4. How specifically will FMC support U.S. pork and other exporters whose product, through no fault of their own, is left stranded at U.S. ports? What specific enforcement actions can FMC take to promote the efficient, timely transport of these products?

ANSWER. The Federal Maritime Commission is committed to enforcing the law and its regulations.

The lack of actionable, factual allegations of violations of the Shipping Act from shippers impedes the ability of the Commission to take enforcement action.

If the Commission can identify through its own efforts ocean carrier behavior that violates the law, the Agency will act.

The Commission is frustrated by the state of the freight delivery system, but to date, there is no action to pursue that would provide the outcomes all of us desire that you so well stated. There are other, non-enforcement actions and priorities that we should not ignore as being beneficial.

Achieving change in the detention and demurrage practices of ocean carriers and marine terminal operators would unquestionably bring relief to exporters who are faced with bills for cargo stranded at a port. As I have outlined in other responses above, the Commission is taking action toward that goal.

QUESTIONS FROM HON. JOHN GARAMENDI TO FRANK PONCE DE LEON, COAST COMMITTEEMAN, COAST LONGSHORE DIVISION, INTERNATIONAL LONGSHORE AND WAREHOUSE UNION

Question 1. Does ILWU agree that trade should be reciprocal, providing both foreign imports access to the American market and U.S. exporters access to foreign markets? In other words, does the ILWU have a position on foreign-owned ocean carriers sending empty containers back to the Asia-Pacific?

ANSWER. The ILWU has long supported fair trade between the United States and its trading partners. This includes equal access to international markets. We believe maintaining the capacity, efficiency and reliability of America’s ports is critical to growing our economy through fair trade and to also maximizing market access for our exports.